

## PREVENTION OF MONEY LAUNDERING ACT, 2002

**INTRODUCTION :** *Money created by crimes when converted into white money it is known as money laundering. The main objectives of The Prevention of Money Laundering Act, 2002 is to prevent money laundering as well as to provide for confiscation of property either derived from or involved in, money-laundering.*

### INTRODUCTION

**Question 1]** What is money laundering? CS (Inter) – Dec 2004 (3 Marks), June 2006 (3 Marks)

**Ans.:** Money and crime are related to each other. Crimes are done because lot of money involved in it. Money created by crimes when converted into white money it is known as money laundering. In simple words, money laundering allows criminals to transform illegally obtained gain into seemingly legitimate funds.

Those who commit the underlying criminal activity may attempt to launder the money themselves, but increasingly a new class of criminals provides laundering services to Organized Crime.

Criminals want their illegal funds laundered because they can then move their money through society freely, without fear that the funds will be traced to their criminal deeds. In addition, laundering prevents the funds from being confiscated by the police.

A classic example of money laundering is the case of M/s Chinubhai Patel & Co. Intelligence received by the Directorate of Revenue Intelligence (DRI) indicated that the South Indian Bank Ltd., Nariman Point Branch, Mumbai was involved in a massive money laundering operation.

One of the accounts was in the name of M/s Chinubhai Patel & Co. said to be existing at 27, Vaishali Shopping Center, JVPD, Bombay - 49, with the South Indian Bank Ltd., Nariman Point Branch, Bombay. Enquiries conducted revealed that the account was opened in February 1994 and the party was introduced by the Bank Manager Mr. Kasturi Rangan.

The Bank Manager did not follow the instructions of the Reserve Bank of India (RBI), and the account was opened without obtaining the photograph of the account holder. Verification of the address revealed that the firm M/s Chinubhai Patel & Co., did not exist at that address. This account was utilized for remittance of \$12 million to Hong Kong in favour of M/s R. P. Imports and Exports, Hong Kong. The remittances were made on the basis of fraudulent documents.

It was further discovered that four more fictitious accounts were created with the same bank. Through these accounts a total amount of US \$ 80 million, was transferred from India to Hong Kong.

Investigations conducted so far by the Directorate of Revenue Intelligence have revealed that certain persons, including Rajesh Mehta and Prakash, had opened bank accounts solely for the purpose of depositing cash and then transferring the said funds in foreign exchange to countries like Hong Kong, Singapore and Dubai.

**Question 1A] Discuss in brief the objectives and scope of the Money Laundering Act, 2002.****CS (Executive) – June 2014 (5 Marks)**

**Ans.:** The Money Laundering Act, 2002 seeks to combat money laundering in India and following main objectives:

- ◆ To prevent and control money laundering
- ◆ To confiscate and seize the property derived from, or involved in, money laundering.
- ◆ To provide punishment for offence of money laundering
- ◆ To appoint the Adjudicating Authority and Appellate Tribunal to deal the matter connected with money laundering.
- ◆ To put obligations on banking companies, financial institutions and intermediaries to maintain records
- ◆ To deal with any other issue connected with money laundering in India.

**Scope:** The Money Laundering Act, 2002 extends to the whole of India.

**Question 2] Discuss briefly the process of money laundering.****CS (Executive) – June 2009 (3 Marks), Dec 2010 (3 Marks)****CS (Executive) – Dec 2013 ( Marks), Dec 2016 (3 Marks)**

**Ans.:** Money laundering is commonly defined as happening in three steps: the first step involves introducing cash into the financial system by some means (placement); the second involves carrying out complex financial transactions to camouflage the illegal source (layering); and the final step entails acquiring wealth generated from the transactions of the illicit funds (integration).

- (1) **The Placement Stage:** The placement stage represents the initial entry of the “dirty” cash or proceeds of crime into the financial system. Generally, this stage serves two purposes: (a) it relieves the criminal of holding and guarding large amounts of bulky of cash; and (b) it places the money into the legitimate financial system. It is during the placement stage that money launderers are the most vulnerable to being caught. This is due to the fact that placing large amounts of money into the legitimate financial system may raise suspicions to the officials.
- (2) **The Layering Stage:** The layering stage is the most complex and often entails the international movement of the funds. The primary purpose of this stage is to separate the illicit money from its source. This is done by the sophisticated layering of financial transactions that obscure the audit trail and sever the link with the original crime.

During this stage, for example, the money launderers may begin by moving funds electronically from one country to another, then divide them into investments placed in advanced financial options or overseas markets; constantly moving them to elude detection; each time, exploiting loopholes or discrepancies in legislation and taking advantage of delays in judicial or police cooperation.

- (3) **The Integration Stage:** In final stage, the money is returned to the criminal from what seem to be legitimate sources. Having been placed initially as cash and layered through a number of financial transactions, the criminal proceeds are now fully integrated into the financial system and can be used for any purpose.

There are many different ways in which the laundered money can be integrated back with the criminal; however, the major objective at this stage is to reunite the money in a manner that does not draw attention and appears to result from a legitimate source. For example, the purchases of property, art work, jewellery, or high-end automobiles are common ways for the launderer to enjoy their illegal profits.

**Question 3]** "The problem of money laundering is no longer restricted to the geo-political boundaries of any country. It is a menace that cannot be contained by any nation alone." Discuss this statement in the context of impact of money laundering on development, various global initiatives on the prevention of money laundering and the enactment of the Prevention of Money Laundering Act, 2002.

CS (Executive) - June 2015 (8 Marks)

Define the term 'money laundering'. How does it impact the development of a growing economy?

CS (Executive) - Dec 2015 (7 Marks)

**Ans.:** Impact of money laundering on development is given below:

- (1) **Increased Crime & Corruption:** Successful money laundering helps to make criminal activities profitable. If money laundering is prevalent in a country, it generates more crime and corruption. It also enhances the use of bribery.
- (2) **Damaged reputation and international consequences:** A reputation as a money laundering or terrorist financing haven could cause significant adverse consequences for development in a country. Foreign Financial institutions (FII) may decide to limit their transactions with institutions from money laundering havens. Even legitimate businesses and enterprises from money laundering havens may suffer from reduced access to world markets or access at a higher cost due to extra scrutiny of their ownership, organization and control systems.
- (3) **Weakened Financial Institutions:** Money laundering and terrorist financing can harm the soundness of a country's financial sector, as well as the stability of individual financial institutions in multiple ways.
- (4) **Compromised economy and private sector:** Money launderers are known to use "front companies," i.e., business enterprises that appear legitimate and engage in legitimate business but are, in fact, controlled by criminals.

These front companies co-mingle the illicit funds with legitimate funds in order to hide the ill-gotten proceeds. Front companies access to illicit funds, allows them to subsidize the front company's products and services, even at below-market prices. As a consequence, legitimate enterprises find it difficult to compete with such front companies, the sole purpose of which is to preserve and protect the illicit funds, not to produce a profit.

This increases the potential for monetary and economic instability due to the misallocation of resources from artificial distortions in asset and commodity prices. It also provides a vehicle for evading taxation, thus depriving the country of revenue.

- (5) **Damaged privatization efforts:** Money launderers threaten the efforts of many countries to reform their economies through privatization. These criminal organizations are capable of outbidding legitimate purchasers of former state-owned enterprises. When illicit proceeds are invested in this manner, criminals increase their potential for more criminal activities and corruption, as well as deprive the country of what should be a legitimate, market-based, taxpaying enterprise.

**Question 4]** Write a note on: Global initiatives in the prevention of money laundering

CS (Executive) - June 2009 (5 Marks)

**Ans.:** Since money laundering is an international phenomenon, transnational co-operation is of critical importance in the fight against this menace. A number of initiatives have been taken to deal with the problem at international level which are given below:

- ◆ The UN or the Bank for International Settlements, took some initiatives in 1980's to address the problem of money laundering.
- ◆ With the creation of the Financial Action Task Force (FATF) in 1989, regional groupings, such as the European Union, Council of Europe, and organization of American States also established anti-money laundering standards for their member countries.

- ◆ The major international agreements addressing money laundering include the UN Convention against Illicit Trafficking in Drugs and Psychotropic Substances (the **Vienna Convention**) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.
- ◆ The role of financial institutions in preventing and detecting money laundering has also been the subject of pronouncements by the Basle Committee on Banking Regulation Supervisory Practices, the European Union and the International Organization of Securities Commissions.

**UN global programme against money laundering:** Office of the Drug Control and Crime Prevention implement this programme against Money Laundering with a view to increase the effectiveness of international action against money laundering through comprehensive technical cooperation services offered to Governments. The programme encompasses following three areas of activities, providing various means to states and institutions in their efforts to effectively combat money laundering:

- Technical co-operation is the main task of the programme. It encompasses activities of creating awareness, institution building and training.
- The research and analysis aims at offering States Key Information to better understand the phenomenon of money laundering and to enable the international community to devise more efficient and effective countermeasure strategies.
- The commitment to support the establishment of financial investigation services for raising the overall effectiveness of law enforcement measures.

The implementation of the global programme against money laundering is carried out in the spirit of co-operation with other international, regional and national organizations and institutions.

**Question 5] Write a short note on: Financial Action Task Force (FATF)**

**CS (Inter) – June 2008 (3 Marks)**

**Discuss the objectives and functions of the Financial Action Task Force (FATF).**

**CS (Executive) – Dec 2016 (5 Marks)**

**Ans.:** The Financial Action Task Force is an inter-governmental organization founded in **1989** on the initiative of the **G7 countries** to develop policies to combat money laundering.

In 2001 the purpose expanded to act on terrorism financing. It monitors countries' progress in implementing the FATF Recommendations by 'peer reviews' of member countries. The FATF Secretariat is housed at the headquarters of the OECD in Paris.

The main tasks of the FATF are:

- ◆ Monitoring members' progress in applying measures to counter money laundering.
- ◆ Reviewing money laundering techniques and countermeasures.
- ◆ Promoting the adoption and implementation of appropriate measures by non-member countries.

The FATF's primary policies issued are the 40 recommendations on money laundering from 1990 and the 9 Special Recommendations on Terrorism Financing.

It also set the international standard for anti-money laundering measures and combating the financing of terrorism and terrorist acts. They set out the principles for action and allow countries a measure of flexibility in implementing these principles according to their particular circumstances and constitutional frameworks. Both sets of FATF Recommendations are intended to be implemented at the national level through legislation and other legally binding measures.

**Question 6] Write a short note on: Prevention of money laundering - Indian initiatives**

**CS (Inter) – Dec 2004 (3 Marks)**

**Ans.:** In view of an urgent need for the enactment of a comprehensive legislation for preventing money-laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money laundering etc.

The Prevention of Money Laundering Bill was introduced in the Parliament in year 1998. The Bill was referred to the Standing Committee on Finance, which presented its report in year 1999 to Lok Sabha.

After incorporating the recommendations of the Standing Committee, the Government introduced the Prevention of Money Laundering Bill, 1999 in the Parliament. The Bill received the assent of the President and became Prevention of Money Laundering Act, 2002. The Act has come in force with effect from July 1, 2005.

## OFFENCE OF MONEY LAUNDERING

**Question 7] What do you understand by 'offence of money-laundering' under the Prevention of Money Laundering Act, 2002? Also state the punishment for money-laundering offence.**

**Ans.: Offence of money-laundering [Section 3]:** Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

**Punishment for money-laundering [Section 4]:** Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for 3 years which may extend to 7 years and shall also be liable to fine.

Where the proceeds of crime involved in money-laundering relates to offence specified under paragraph 2 of Part A of the Schedule, then imprisonment may extend to 10 years instead of 7 years.

## ATTACHMENT, ADJUDICATION & CONFISCATION

**Question 8] How the property involved in money laundering is dealt with under the Prevention of Money Laundering Act, 2002?**

CS (Executive) – Dec 2010 (5 Marks)

**Ans.: Attachment of property involved in money-laundering [Section 5]:** Director, Joint Director or Deputy Director can provisionally attach property up to 180 days, if he has reasons to believe that such person is in possession of proceeds of crime, he is charged with that crime and proceeds of money are likely to be concealed or transferred.

The reasons to believe should be recorded in writing. The reason should be sent in sealed cover to adjudicating authority along with copy of attachment order.

After attachment, a complaint will be filed with adjudicating authority within 30 days.

**Question 9] Write a short note on: Adjudicating Authorities under the Prevention of Money Laundering Act, 2002**

**Ans.: Adjudicating Authorities [Section 6]:** The Central Government has a power to appoint an Adjudicating Authority to exercise jurisdiction, powers and authority under the Act.

An Adjudicating Authority shall consist of a Chairperson and two other members. Out of the two members, one member shall be a person having experience in the field of law, administration, finance or accountancy.

The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice. The Adjudicating Authority shall have powers to regulate its own procedure.

**Question 10] Write a short note on: 'Adjudication' under the Prevention of Money Laundering Act, 2002**

**Ans.: Adjudication [Section 8]:** On receipt of a complaint under Section 5(5), or applications made under Section 17(4) or Section 18(10), if the Adjudicating Authority has reason to believe that any person has committed an offence u/s 3 or is in possession of proceeds of crime, a notice of not less than 30 days will be served calling him to indicate the sources of his income, earning or assets and to show cause why the property should not be confiscated.

After hearing the Adjudicating Authority will record its findings whether all or any of the properties are involved in money-laundering or not.

Where the Adjudicating Authority decides that any property is involved in money laundering, he shall, by an order in writing, confirm the attachment of the property or if already attached it will continue till order of trial court becomes final.

If the person is found guilty finally by the Court, the attached property will vest absolutely with Central Government.

**Question 11] Mention the provision of the Prevention of Money Laundering Act, 2002 relating to 'Vesting of property in Central Government'.**

**Ans.: Vesting of property in Central Government [Section 9]:** Where an order of confiscation has been made in respect of any property, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.

If the Special Court or the Adjudicating Authority finds that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of the Act, it may declare such encumbrances or lease-hold interest to be void. On declaration of void, all property shall vest in the Central Government free from such encumbrances or lease-hold interest.

## **OBLIGATION OF BANKING COMPANIES, FINANCIAL INSTITUTIONS & INTERMEDIARIES**

**Question 12] Mention the provisions of the Prevention of Money Laundering Act, 2002 regarding the obligations of banking companies, financial institutions and intermediaries.**

CS (Inter) - Dec 2007 (5 Marks)

CS (Executive) - Dec 2011 (5 Marks), June 2016 (5 Marks)

**Ans.: Reporting entity to maintain records [Section 12]:** The bank, financial institutions and intermediary has obligations

- To maintain records of all transactions and value as prescribed, whether such transactions comprise of a single transactions or a series of transactions internally connected to each other when such series take place within a month.
- To inform the director within prescribed time.
- To verify the identity of its clients in prescribed manner.
- To maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Every information maintained, furnished or verified as above shall be kept confidential.

The records mentioned above shall be maintained for 5 years from the date of transaction.

The Central Government has a power to exempt any reporting entity from the provisions of this section.

**Powers of Director to impose fine [Section 13]:** Director can call the records from the bank, financial institutions and intermediary. If the Director finds that the bank, financial institutions and intermediary has not complied with the provisions of Section 12, he can impose fine of ₹ 10,000 to ₹ 1,00,000.

If the bank, financial institutions and intermediary supplies the information, no civil proceedings can be taken against them for furnishing information to Authority. **[Section 14]**

**Procedure and manner of furnishing information by reporting entities [Section 15]:** The Central Government in consultation with the RBI may prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity for the purpose of implementing the provisions of the Act.

## SUMMONS, SEARCHES & SEIZURES

**Question 13] State the provisions relating to summon, searches and seizures under the Prevention of Money Laundering Act, 2002?**

**Ans.: Power of survey [Section 16]:** An authority has power to enter any place on having reason to believe that an offence u/s 3 has been committed. Such authority can place marks of identification on the records inspected by him and make or cause to be made extracts or copies, make an inventory of any property checked or verified by him and record the statement of any person present in the place which may be useful for any proceedings under the Act.

**Search & Seizure [Section 17]:** Director, Joint Director or Deputy Director may authorize any officer subordinate to them:

- (a) To enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept
- (b) To break and open the lock of any door, box, locker, safe, almirah where the keys are not available
- (c) To seize any record or property found as a result of such search
- (d) To place marks of identification on record or property or make extracts or copies
- (e) To make a note or an inventory of record or property
- (f) To examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant to investigation

In case of scheduled offence search shall be conducted only when a report has been forwarded to a Magistrate or a complaint has been filed by a person authorized to investigate scheduled offence before a Magistrate.

Where it is not practicable to seize record or property, the authorized officer under may make an order to freeze such property.

Immediately after search and seizure or upon issuance of a freezing order, the authority shall forward a copy of the reasons so recorded along with material in his possession to the Adjudicating Authority in a sealed envelope in the prescribed manner.

**Search of persons [Section 18]:** Authorized authority may search person and seize record or property which may be useful for or relevant to any proceedings under this Act.

**Power to arrest [Section 19]:** The Director, Deputy Director, Assistant Director, or any authorized officer may arrest such person and inform him of the grounds for such arrest.

Immediately after arrest of person, information will be provided to the Adjudicating Authority, in a sealed envelope.

Every person arrested shall be taken before the Magistrate within 24 hours.

**Question 14] State the provisions relating to 'retention of property' under the Prevention of Money Laundering Act, 2002?**

**Ans.: Retention of property [Section 20]:** Where any property has been seized during the search be retained or if frozen, may continue to remain frozen, for a period not exceeding 180 days from date of seizure or frozen as the case may be.

Immediately after passing an order for retention or continuation of freezing of the property, the officer authorized by the Director shall forward a copy of the order along with the material in his possession to the Adjudicating Authority in a sealed envelope in the prescribed manner.

On the expiry of period of 180 days, the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen.

The Adjudicating Authority may retain or allow to continue to freeze property beyond 180 days if he is satisfied that property is *prima facie* involved in money-laundering.

After passing the order of confiscation, the Court or the Adjudicating Authority shall direct the release of all property other than the property involved in money-laundering.

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**Question 15] State the provisions relating to 'retention of records' under the Prevention of Money Laundering Act, 2002?**

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**Ans.: Retention of records [Section 21]:** Where any records have been seized or frozen, the investigating officer may continue to seize or may allow continue to remain frozen records for period of 180 days if he has reason to believe that any of such records are required to be retained for any inquiry under the Act. However, copies of records can be obtained on request. By the person from whom records seized or frozen.

On the expiry of 180 days, the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen.

After passing of an order of confiscation, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

Where an order releasing the records has been made, the Director or authorized officer may withhold the release of records for a period of 90 days from the date of order, if he is of the opinion that such record is relevant for making appeal.

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**Question 16] State whether offence punishable under the Prevention of Money Laundering Act, 2002 or bailable or non-bailable? What is role of Public Prosecutor? When Special Court can take cognizance of any offence punishable under the Act?**

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**Ans.: Offences to be cognizable and non-bailable [Section 45]:** Every offence punishable under the Act to be cognizable.

A person accused of an offence punishable for a term of imprisonment of **more than 3 years** shall not be released on bail or on bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release.

If the Public Prosecutor opposes the application then bail can be granted only when Court is satisfied that there are reasonable grounds for believing that he is not guilty of offence and that he is not likely to commit any offence while in bail.

The Special Court shall not take cognizance of any offence punishable under section 4, except upon a complaint in writing made by the Director or any officer of the Central or State Government authorized by a general or special order.

No police officer shall investigate into an offence under the Act, unless specifically authorized, by the Central Government by a general or special order.

## KNOW YOUR CUSTOMER

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**Question 17] Write a short note on: Know Your Customer Guidelines**

CS (Executive) - June 2009 (3 Marks)

**What is the objective of 'know your customer' (KYC) guidelines? When do the KYC guidelines apply?**

CS (Executive) - Dec 2009 (5 Marks), Dec 2014 (3 Marks)

**Ans.:** In terms of the guidelines issued by the RBI on 29<sup>th</sup> November, 2004 on Know Your Customer (KYC) Standards/ Anti Money Laundering Measures, all banks are required to put in place a comprehensive policy framework covering KYC Standards and AML Measures. RBI introduced KYC guidelines for all banks.

KYC enables banks to know/ understand their customers and their financial dealings to be able to serve them better and manage its risks prudently.

**Objective of KYC Guidelines:** The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. KYC procedures also enable banks to know/understand their customers and their financial dealings better which in turn help them manage their risks prudently. Banks should frame their KYC policies incorporating the following four key elements:

- Customer Acceptance Policy
- Customer Identification Procedures
- Monitoring of Transactions and
- Risk management

**Meaning of Customer:** For the purpose of KYC policy, a 'Customer' may be defined as:

- A person or entity that maintains an account with the bank
- The beneficial owner
- beneficiaries of transactions conducted by professional intermediaries, such as Stock Brokers, CA, Solicitors etc. and
- Any person or entity connected with a financial transaction which can pose significant reputational or other risks to the bank.

**Need for KYC:** KYC is done to establish the identity of the client. This means identifying the customer and verifying his/her identity by using reliable, independent source documents, data or information. For individuals, banks are required to obtain identification data to verify the identity of the customer, his address/location and also his recent photograph. This is to be done for the joint holders and mandate holders as well.

For non-individuals, banks need to obtain identification data to:

- Verify the legal status of the legal person/entity
- Verify identity of the authorized signatories and
- Verify identity of the Beneficial owners/ controllers of the account

To ensure that sufficient information is obtained on the nature of employment/business that the customer does/ expects to undertake and the purpose of the account

**When does KYC apply?:** KYC is carried out at the following stages:

- Opening a new account
- Opening a subsequent account where documents as per current KYC standards not been submitted while opening the initial account.
- Opening a Locker Facility where these documents are not available with the bank for all the Locker facility holders.
- When the bank feels it necessary to obtain additional information from existing customers based on conduct of the account.
- When there are changes to signatories, mandate holders, beneficial owners etc.

KYC is also carried out in respect of non-account holders approaching the bank for high value one-off transactions.

## FOREIGN TRADE POLICY & PROCEDURE

### [1ST APRIL, 2015 – 31ST MARCH, 2020]

**INTRODUCTION :** Aiming to nearly double India's exports of goods and services to \$900 billion by 2020, the government has announced several incentives in the 5 years Foreign Trade Policy for exporters and units in the Special Economic Zones.

Unveiling the first trade policy of the NDA government, Commerce Minister Nirmala Sitharaman said the FTP (2015-20) will introduce Merchandise Exports from India Scheme (MEIS) and Services Exports from India Scheme (SEIS) to boost outward shipments.

Following are the highlights of the Foreign Trade Policy 2015-20 announced by Commerce & Industry Minister Nirmala Sitharaman:

- ◆ Increase exports to \$900 billion by 2019-2020, from \$466 billion in 2013-2014.
- ◆ Raise India's share in world exports from 2% to 3.5%.
- ◆ Merchandise Export from India Scheme (MEIS) and Service Exports from India Scheme (SEIS) launched.
- ◆ Higher level of rewards under MEIS for export items with High domestic content and value addition.
- ◆ Incentives extended to units located in SEZs.
- ◆ Export obligation under EPCG scheme reduced to 75% to promote domestic capital goods manufacturing.
- ◆ FTP to be aligned to Make in India, Digital India and Skills India Initiatives.
- ◆ Duty credit scrip's made freely transferable and usable for payment of custom duty, excise duty and service tax.
- ◆ Export promotion mission to take on board State Governments.
- ◆ Unlike annual reviews, FTP will be reviewed after two-and-half years.
- ◆ Higher level of support for export of defense, farm produce and eco-friendly products.

**Question 1] What are the objectives of Foreign Trade Policy (FTP)? What strategies are adopted by Government to achieve these objectives?**

CS (Final) – Dec 1995 (5 Marks)

**What are the short-term and long-term objectives of India's foreign trade policy?**

CS (Executive) – Dec 2016 (5 Marks)

**Ans.:** The FTP has following 2 objectives:

- (1) To double India's global merchandise trade within the next 5 years and
- (2) To increase economic growth and create additional employment opportunities.

**Strategies to achieve objectives:** With a view to achieve the defined objectives of FTP, the Government has devised and adopted the following strategies:

- ◆ To create an atmosphere of trust and transparency.
- ◆ To simplify procedures and bringing down transaction costs.
- ◆ To neutralize incidence of duties on inputs used in export products.
- ◆ To facilitate development for manufacturing, trading and services.
- ◆ To generate additional employment in semi-urban and rural areas.
- ◆ To facilitate technological and infrastructural up-gradation.
- ◆ To ensure that domestic sectors are not disadvantaged in the Free Trade Agreements/ Regional Trade Agreements/ Preferential Trade Agreements entered into in order to enhance India's exports.
- ◆ To upgrading the infrastructural network.
- ◆ To redefine role of Board of Trade.
- ◆ To activate Indian Embassies as key players in the export strategy.

**Question 2] Write a short note on: Legal Framework of Foreign Trade Policy**

**Ans.:**

- (1) **Legal Basis of Foreign Trade Policy:** The Foreign Trade Policy 2015-2020, is notified by Central Government, in exercise of powers conferred under **Section 5 of the Foreign Trade (Development & Regulation) Act, 1992**, as amended.
- (2) **Duration of FTP:** The Foreign Trade Policy 2015-2020, incorporating provisions relating to export and import of goods and services shall come into force with effect from the date of notification and shall remain in force up to 31<sup>st</sup> March, 2020, unless otherwise specified. All exports and imports made up to the date of notification shall, accordingly, be governed by the relevant FTP, unless otherwise specified.
- (3) **Amendment to FTP:** Central Government, in exercise of powers conferred by Section 5 of Foreign Trade (Development & Regulation) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

**Question 3] The Board of Trade has been given a clear and dynamic role in advising the Government on relevant issues connected with FTP. Discuss.**

**Write a short note on: Board of Trade**

**CS (Executive) - June 2014 (5 Marks)**

**Ans.:** The Board of Trade has been given a clear and dynamic role in advising the Government on relevant issues connected with FTP. A process of continuous interaction between the Board of Trade and the Government has been put in place in order to achieve the desired objective of boosting India's exports. The terms of reference of the Board of Trade include:

- (1) Advising the Government on policy measures for preparation and implementation of both short and long term plans for increasing exports in the light of emerging national and international economic scenarios.
- (2) Reviewing export performance of various sectors, identify constraints and suggest industry specific measures to optimize export earnings.
- (3) Examining the existing institutional framework for imports & exports and suggest practical measures for further streamlining to achieve the desired objectives.
- (4) Reviewing the policy instruments and procedures for imports & exports and suggest steps to rationalize and channelize such schemes for optimum use.
- (5) Examining issues which are considered relevant for promotion of India's foreign trade, and to strengthen the international competitiveness of Indian goods and services.
- (6) Commissioning studies for furtherance of the above objectives.

**Composition:** The Government has been empowered to nominate an eminent person or expert on trade policy to be President of the Board of Trade and 25 persons as members, of whom at least ten to be experts in trade policy. In addition, Chairmen of recognized Export Promotion Councils and President or Secretary-Generals of National Chambers of Commerce to be ex-officio members.

**Meetings:** The Board is required to meet at least once every quarter and make recommendations to Government on issues pertaining to its terms of reference. The Board of Trade has been empowered to set up sub-committees and to co-opt experts to make recommendations on specific sectors and objectives.

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**Question 4] Who is empowered to decide questions arising in respect of interpretation of FTP?**

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**Ans.:** The Foreign Trade Policy 2015-2020 empowers the Director General of Foreign Trade (DGFT) to decide on any question or doubt arising in respect of the interpretation of any provision contained in the Policy, or regarding the classification of any item in the ITC (HS) or procedures, any scheme, or Schedule of DEPB Rate.

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**Question 5] Whether every licence valid for a specified period under FTP?**

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**Ans.:** Yes, Foreign Trade Policy 2015-2020 provides that every licence/certificate/permission/authorization shall be valid for the period of validity specified in the licence/certificate/permission/authorization shall contain such terms and conditions as may be specified by the licensing authority.

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**Question 6] Write a short note on: e-governance of Foreign Trade**

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**Ans.:**

- (a) DGFT delivers most of its services on a transparent and efficient EDI platform using tools like On-line filing of Applications, Message Exchange with Community Partners, Digital Signatures and Electronic payment of application fee. Use of EDI at DGFT has enabled faster processing, speedier communication by e-mail and on-line availability of application processing status. The endeavour is to achieve higher level of information sharing through SMS.
- (b) Export Import related information including Acts, Rules, Policy & Procedures thereof including online DGFT portal can be accessed at <http://dgft.gov.in/>.
- (c) All the DGFT Regional Authorities are EDI enabled and connected with the DGFT Central Server to provide online connectivity to EXIM community in a 24 × 7 environment.
- (d) DGFT keeps expanding the scope and domain of EDI on a continuous basis. The endeavour is to achieve higher level of integration with community partners.

**Procedure:** An exporter shall file his application online on DGFT website at <http://dgft.gov.in/>. Application will then be processed in accordance with prevalent rules and regulations. The processing of applications will be made online. DGFT shall issue deficiency letters, if any, in online mode or through use of e-mail. No communication shall be issued by DGFT in manual mode.

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**Question 7] What do you understand by Importer Exporter Code Number? Who are exempted from taking it? To whom application for grant of IEC No. should be made? How duplicate copy of IEC No. can be obtained? When IEC No. required to be surrendered?**

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**Explain the procedure for obtaining importer exporter code number?**

CS (Final) - June 1994 (7 Marks), June 2000 (8 Marks)

**Ans.: Importer-Exporter Code (IEC):** An IEC is a 10-digit number allotted to a person that is mandatory for undertaking any export/import activities. Now the facility for IEC in electronic form or e-IEC has also been operationalised.

**Application for IEC/e-IEC:** Application for obtaining IEC can be filed manually and submitting the form in the office of Regional Authority of DGFT. Alternatively, an application for e-IEC may be filed online

in ANF 2A with application fee of ₹ 500 through net banking or credit/debit card. Documents/details required to be uploaded/submitted along with the application form are listed in the Application Form (ANF 2A).

**No Export/Import without IEC:**

- (a) No export or import shall be made by any person without obtaining an IEC number unless specifically exempted.
- (b) Exempt categories and corresponding permanent IEC numbers are given in Handbook of Procedures.

**Only one IEC against one Permanent Account Number:** Only one IEC is permitted against one Permanent Account Number (PAN). If any PAN card holder has more than one IEC, the extra IECs shall be disabled.

**Duplicate copy of IEC No.:** In case the IEC No. is lost or misplaced, the issuing authority may consider requests for grant of a duplicate copy of IEC No., if accompanied by an affidavit.

**Surrender of IEC No.:** If an IEC holder does not wish to operate allotted IEC, he may surrender the same to the issuing authority. On receipt, the issuing authority shall immediately cancel the IEC and electronically transmit it to DGFT and Customs authorities.

**Validity of IEC:** An IEC allotted to an applicant shall have permanent validity unless cancelled by the competent authority. The IEC will cover all branches/divisions/units/factories of the applicant.

**Question 8] Write a short note on: Mandatory documents for export/import of goods from/into India**

**Ans.:** Mandatory documents required for export of goods from India:

- Bill of Lading/ Airway Bill
- Commercial Invoice cum Packing List
- Shipping Bill/Bill of Export

Mandatory documents required for import of goods into India

- Bill of Lading/ Airway Bill
- Commercial Invoice cum Packing List
- Bill of Entry

**Question 9] Write a short note on: Export and import of restricted goods**

**Ans.:** DGFT may, through a Notification, impose restrictions on export and import, necessary for:

- (a) Protection of public morals
- (b) Protection of human, animal or plant life or health
- (c) Protection of patents, trademarks and copyrights, and the prevention of deceptive practices
- (d) Prevention of use of prison labour
- (e) Protection of national treasures of artistic, historic or archaeological value
- (f) Conservation of exhaustible natural resources
- (g) Protection of trade of fissionable material or material from which they are derived;

**Export or Import of restricted goods or services:** Any goods/service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorization/ Permission or in accordance with the procedure prescribed in a Notification/Public Notice issued in this regard.

**Question 10] Write a short note on: Star Export House**

CS (Executive) - Dec 2008 (3 Marks)

**Write a short note on: Privileges to Star Export House**

CS (Executive) - June 2010 (3 Marks)

Ans.:

(1) **Who can apply:** All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance. An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years. The export performance will be counted on the basis of FOB value of export earnings in free foreign exchange.

(2) **Status Category:** For granting status, export performance is necessary in at least 2 out of 3 years:

Category	Export Performance FOB/FOR Value (in US \$ million)
1 Star Export House	3
2 Star Export House	25
3 Star Export House	100
4 Star Export House	500
5 Star Export House	2000

(3) **Conditions for grant of status:**

- (a) Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder.
- (b) Exports made on re-export basis shall not be counted for recognition.
- (c) Export of items under authorization, including Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) items, would be included for calculation of export performance.

(4) **Privileges to Status Holders:** A Status Holder shall be eligible for privileges as under:

- (a) Authorization and Customs Clearances for both imports and exports may be granted on self-declaration basis.
- (b) Input-Output norms may be fixed on priority within 60 days by the Norms Committee.
- (c) Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or HBP.
- (d) Exemption from compulsory negotiation of documents through banks. Remittance, however, would be received through banking channels.
- (e) Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.
- (f) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.
- (g) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
- (h) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under different preferential trading agreements, Free Trade Agreements, Comprehensive Economic Cooperation Agreements & Comprehensive Economic Partnership Agreements. Subsequently, the scheme may be extended to remaining Status Holders.
- (i) Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India as per of Hand Book of Procedures.

- (j) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹ 10 lakh or 2% of average annual export realization during preceding three licensing years whichever is higher.

**Question 11] Write a short note on: Merchandise Exports from India Scheme**

**Ans.:** Merchandise Exports from India Scheme (MEIS) has replaced 5 different schemes of earlier FTP (Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri. Infrastructure Incentive Scrip, Vishesh Krishi & Gram Udyog Yojana) for rewarding merchandise exports which had varying conditions (sector specific or actual user only) attached to their use.

**Objective:** Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

**Entitlement under MEIS:** Exports of notified goods/products with ITC [HS] code, to notified markets as listed in Appendix 3B to the FTP shall be rewarded under MEIS.

**Question 12] Write a short note on: Duty Free Import Authorization**

**Ans.:** Duty Free Import Authorization is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/utilized in the process of production of export product, may also be allowed.

**Eligibility:**

- (a) Duty Free Import Authorization shall be issued on post export basis for products for which Standard Input Output Norms have been notified.
- (b) Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Airway Bill / Bill of Export/ ARE-1/ ARE-3.
- (c) Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorization.

**Minimum Value Addition:** Minimum value addition of 20% shall be required to be achieved. For items where higher value addition has been prescribed under Advance Authorization, the same value addition shall be applicable for Duty Free Import Authorization also.

**Question 13] Write a short note on: Service Exports from India Scheme (SEIS)**

**Ans.:** Served from India Scheme (SFIS) has been replaced with Service Exports from India Scheme (SEIS). SEIS shall apply to 'Service Providers' located in India instead of 'Indian Service Providers'. Thus, SEIS provides for rewards to all Service providers of notified services, who are providing services from India, regardless of the constitution or profile of the service provider.

**Objective:** Objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.

**Eligibility:**

- (a) Service Providers of notified services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified.
- (b) Such service provider should have minimum net free foreign exchange earnings of US \$15,000 in preceding financial year to be eligible for Duty Credit Scrip. For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US \$10,000 in preceding financial year.

**Entitlement under SEIS:** Service Providers of eligible services shall be entitled to Duty Credit Scrip at notified rates on net foreign exchange earned.

**SPECIAL ECONOMIC ZONE****Question 14] Write a short note on: Special Economic Zone (SEZ)**

CS (Inter) – Dec 2005 (3 Marks), Dec 2006 (3 Marks)

CS (Inter) – June 2007 (5 Marks)

**Special Economic Zones are engines of growth.**

CS (Executive) – June 2014 (5 Marks)

**Ans.:**

- (1) **Meaning:** Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs. Goods and services going into the SEZ area from DTA shall be treated as exports and goods coming from the SEZ area into DTA shall be treated as if these are being imported. SEZ units may be set up for manufacture of goods and rendering of services.
- (2) **Who can set up SEZs:** A SEZ may be set up in the public, private, joint sector or by state Government.
- (3) **Management of SEZ:** SEZ has been put under the administrative control of the Development Commissioner. All activities of SEZ units within the Zone, unless otherwise specified, including export and re-import of goods have been permitted through self-certification procedure.
- (4) **Entitlement for SEZ Developer:** The developer of SEZ shall be eligible for the following entitlements
  - Income tax exemption as per section 80-IA of the Income-tax Act.
  - Import/procure goods without payment of Customs/Excise duty
  - Exemption from Service tax
  - Exemption from CST
- (5) **Exit from SEZ Scheme:** SEZ unit may opt out of the scheme with the approval of the Development Commissioner. Such exit from the scheme is subject to payment of applicable Customs and Excise duties on the imported and indigenous capital goods, raw materials and finished goods in stock. In case the unit has not achieved positive NFE, the exit shall be subject to penalty, that may be imposed by the adjudicating authority under Foreign Trade (Development and Regulation) Act, 1992. SEZ unit may also be permitted by the Development Commissioner, as one time option, to exit from SEZ scheme on payment of duty on capital goods under the prevailing EPCG Scheme.
- (6) **Export and Import of goods:**
  - SEZ units may export goods and services including agro-products, partly processed goods, sub-assemblies and components except prohibited items of exports.
  - The units may also export by-products, rejects, waste scrap arising out of the production process.
  - SEZ unit may import or procure from the DTA without payment of duty all types of goods and services, including capital goods subject to prescribed condition.
  - SEZ units may procure goods required by it without payment of duty, from bonded warehouses in the DTA.
- (7) **International exhibitions held in India:** SEZ units, may import or procure from DTA, without payment of duty, all types of goods for creating a central facility for use by units in SEZ. The Central facility for software development can also be accessed by units in the DTA for export of software. Gem & Jewellery units may also source gold/silver/platinum through the nominated agencies. SEZ units may import or procure goods and services from DTA without payment of duty for setting up, operation and maintenance of units in the Zone.

- (8) **Leasing of Capital Goods:** SEZ unit may, on the basis of a firm contract between the parties, source the capital goods from a domestic/foreign leasing company. In such a case the SEZ unit and the domestic/foreign leasing company shall jointly file the documents to enable import/procurement of the capital goods without payment of duty.
- (9) **Net Foreign Exchange Earning (NFE) :** SEZ unit should be a positive Net Foreign Exchange Earner. Net Foreign Exchange Earning (NFE) is calculated cumulatively for a period of five years from the commencement of production according to the prescribed formula.
- (10) **Monitoring of performance:** The performance of SEZ units is monitored by the Unit Approval Committee, as per the specified guidelines.
- (11) **Legal undertaking:** The unit is required to execute a legal undertaking with the Development Commissioner concerned and in the event of failure to achieve positive foreign exchange earning it has been made liable to penalty in terms of the legal undertaking or under any other law for the time being in force.
- (12) **Approvals and applications:** Applications for setting up a unit in SEZ other than proposals for setting up of unit in the services sector are approved or rejected by the Units Approval Committee within 15 days as per prescribed procedure. In other cases approval may be granted by the Board of Approval. Proposals for setting up units in SEZ requiring Industrial Licence may be granted approval by the Development Commissioner after clearance of the proposal by the SEZ Board of Approval and Department of Industrial Policy and Promotion within 45 days on merits.
- (13) **DTA sales and supplies:** SEZ unit may sell goods, including by-products, and services in DTA in accordance with the import policy in force, on payment of applicable duty. DTA sale by service/trading unit is subject to achievement of positive NFE cumulatively.

**Question 15] What are the salient features of the Special Economic Zones Act, 2005?**

**CS (Executive) – Dec 2008 (3 Marks)**

**State the salient features of the Special Economic Zones Act, 2005. Also, state the method of appointment and functions of the Development Commissioner.**

**CS (Executive) – Dec 2016 (8 Marks)**

**Ans.:** The salient features of the Act are as under:

- ◆ To deal with matters relating to establishment of Special Economic Zone and for setting up of units, including requirements, obligations and entitlements.
- ◆ To deal with matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in SEZ.
- ◆ Single window clearance mechanism.
- ◆ Establishment of an Authority for each SEZ set up by the Central Government to impart greater administrative autonomy and
- ◆ Designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in SEZ.

**Appointment of Development Commissioner [Section 11]:** Central Government appoints the Development Commissioner for one or more Special Economic Zones and such Officers and other employees as it considers necessary to assist every Development Commissioner. Section also contains provisions for salary and allowances and other terms and conditions of service in respect of leave, pension, provident fund and other matters of the Development Commissioner, officers and other employees.

**Functions of the Development Commissioner [Section 12]:** Every Development Commissioner to take steps in order to discharge his functions to ensure speedy development of the Special Economic Zone and promotion of exports therefrom.

*The functions of the Development Commissioner include:*

- (a) Guide the entrepreneurs for setting up of Units in the Special Economic Zone;
- (b) Ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;
- (c) Ensure proper coordination with the Central Government or State Government Departments concerned or agencies with respect to, or for above purposes;
- (d) Monitor the performance of the Developer and the Units in SEZ;
- (e) Discharge such other functions as may be assigned to him by the Central Government and
- (f) Any other functions as may be delegated to him by the Board of approval.

## INDIAN CONTRACT ACT, 1872

**INTRODUCTION:** *The Law of Contract constitutes the most important branch of Mercantile or Commercial Law. It affects everybody, more so, trade, commerce and industry. It may be said that the contract is the foundation of the civilized world. Therefore, it is essential for the students to be familiar with the law relating to Contract. The Indian Contract Act came into force on 1st September, 1872. It extends to whole of India excluding State of Jammu & Kashmir. The Act does not affect the usage or custom of trade. A Contract is an agreement made between two or more parties, which the law will enforce.*

### CONTRACT - MEANING

#### Question 1] What is contract?

**Ans.:** Contract [Section 2(h)]: A Contract is an agreement which is enforceable by law.

**Agreement [Section 2(e)]:** Every promise and every set of promises forming the consideration for each other is an agreement.

**Promise [Section 2(b)]:** When the person to whom the proposal is made signifies his assent, the proposal is said to be accepted. Proposal when accepted becomes a promise.

An agreement comes into existence by the process of offer by one party and its unqualified acceptance by the other party.

#### Question 2] Write a short note on: Consensus ad idem

**Ans.:** The parties who enter into an agreement must agree upon the subject-matter in the same sense and at the same time, i.e. there must be consensus ad idem.

*Example:* X owns two horses, one is white & other is black. X wants to sale white horse to Y. P thinks that he is purchasing black horse. There is no contract as there no *consensus ad idem*.

**Question 3] Arun has two cars - one of white colour and another of red colour. He offers to sell one of the cars to Basu thinking that he is selling the car which has white colour. Basu agrees to buy the car thinking that Arun is selling the car which has red colour. Will this agreement become a valid contract? Give reasons.**

CS (Foundation) - June 2005 (5 Marks)

**Ans.:** The parties who enter into an agreement must agree upon the subject-matter in the same sense and at the same time, i.e. there must be consensus ad idem. In the given problem, the agreement between Arun and Basu will not become a valid contract because there is no *consensus-ad-idem*.

**Question 4] Law of contract creates jus in personam as distinguished from jus in rem.****Ans.:****(1) Jus in personam means right against specific person.**

*Example:* Baban owes ₹ 5,000 to Sameer. Sameer has right to recover ₹ 5,000 from Baban. In this case right of Sameer is against specific person i.e. Baban. Hence this right is called as *jus in personam*.

**(2) Jus in rem means a right against whole world.**

*Example:* Arun is the owner of a plot of land. He has right to have quit possession and enjoyment of that land against every member of public. This right of Arun is *jus in rem*.

**Question 5] A social agreement is different than legal agreement. Discuss.**

**Ans.:** An agreement may be a social agreement or a legal agreement. A social agreement is that which does not give rise to legal consequences. In case of its breach the parties cannot go to the Law Court to enforce a right.

*Example:* A invites his friend B to take dinner. When B came A refuses to perform his obligation. B has no remedy as obligation of A is social obligation & not a legal or contractual.

A legal agreement is that which gives rise to legal consequences and remedies in the Law Court in case of its breach.

**Question 6] X promised to pay ₹ 10,000 per month to his wife Mrs. X who was living in Mumbai. On receiving information that she was unfaithful to him, he stopped paying ₹ 10,000 to Mrs. X. Mrs. X approaches you to file a case against Mr. X. Advise her with reference to the Indian Contract Act, 1872.**

CS (Executive) - Dec 2013 (5 Marks)

**Ans.:** An agreement may be a social agreement. A social agreement is that which does not give rise to legal consequences. In case of its breach the parties cannot go to the Law Court to enforce a right.

Agreement between husband and wife is social agreement and do not create any binding legal relations. Hence, Mrs. X cannot file suit against her husband for non-payment of ₹ 10,000 to her every month.

**Question 7] Write a short note on: E-Contract**

CS (Executive) - June 2014 (3 Marks)

**Ans.:** Electronic contracts are not paper based but rather in electronic form are born out of the need for speed, convenience and efficiency. In the electronic age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract. The conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts. The Information Technology Act, 2000 solves some of the peculiar issues that arise in the formation and authentication of electronic contracts. As in every other contract, an electronic contract also requires to fulfil the essential element of contract laid down in Section 10 of the Indian Contract, 1872.

**ESSENTIAL ELEMENT OF VALID CONTRACT****Question 8] What are the essential elements of valid contract?**

CS (Executive) - Dec 2013 (5 Marks)

**Ans.:** What agreements are contracts [Section 10]: All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void.

Essential elements of a valid contract are as follows:

- (1) There must be an agreement. This involves two parties, one party making the offer and the other party accepting it.

- (2) The parties must intend to create legal relationship.
- (3) The parties must be capable of entering into an agreement as regards age and understanding. Thus, person making contract should not be minor, idiot or lunatic.
- (4) The agreement must be supported by consideration on both sides.
- (5) The consent of the parties must be free and genuine.
- (6) The object of the agreement must be lawful.
- (7) The terms of the agreement must be certain and capable of performance.
- (8) The agreement must not have been expressly declared as void.

## CLASSIFICATION OF CONTRACTS

**Question 9] Write a short note on: Classification of contracts/agreements**

**Write a short note on: Executed & executory contract**

**CS (Foundation) - Dec 1998 (5 Marks)**

**Ans.:**

- (1) **Void Agreement [Section 2(g)]:** An agreement not enforceable by law.  
*Example:* A agrees to give B ₹ 10,000 if he beats C. B accept it. This is void agreement.
- (2) **Void Contract [Section 2(f)]:** A contract which, ceases to be enforceable by law. Thus, A contract which is valid initially however, ceases to enforceable subsequently become void when it ceases be enforceable.  
*Example:* A enters into contract with P of Pakistan to sale 10,000 kg of wheat. P accept it. But subsequently Government of India declares war with Pakistan. Now the contract will become void contract.
- (3) **Voidable Contract [Section 2(i)]:** A Contract, which is enforceable by law at the option of one party thereto, but not at the option of the other.  
*Example:* Sachin at point of pistol ask Arun to sign the documents for transfer of house. This is voidable contract at the option of Arun because Arun can go in to Court of law but not Sachin.
- (4) **Unlawful Agreement:** An unlawful agreement is agreement, which is not enforceable by law. It is void *ab initio*. It affects immediate parties only and has no further consequences.
- (5) **Illegal Agreement:** An agreement, which involves the transgression of, some rule of basic public policy and is criminal in nature or immoral. It is not only void as between the immediate parties but it also taints the collateral transactions with illegality.
- (6) **Express Contract:** A contract is which the terms are stated in words (written or spoken) by the parties.
- (7) **Implied Contract:** A contract which is inferred from the circumstances of the case or from the conduct of the parties is known as implied contract.
- (8) **Tacit contract:** Where a contract has to be inferred from the conduct of parties.  
*Example:* Drawing cash from ATM, Sale by fall of hammer at auction sale etc.
- (9) **Quasi Contract:** An obligation created by law, regardless of agreement.
- (10) **Executed Contract:** A contract which is wholly performed by both the parties.
- (11) **Executory Contract OR Bilateral Contract:** A contract in which the promises of both the parties have yet to be performed.
- (12) **Partly executory, partly executed OR unilateral contract:** A contract in which one party has performed his obligation, but the other party has yet to perform his obligation.

**Question 10] Distinguish between: Agreement & Contract**

**Ans.:** Following are the main points of difference between agreement & contract:

Points	Agreement	Contract
<b>Meaning</b>	Every promise and every set of promises forming the consideration for each other.	A contract is an agreement which is enforceable by law.
<b>Enforceability</b>	An agreement may or may not be enforceable at law. For example, social agreements are generally not enforceable while business agreements are enforceable at law.	A contract is enforceable at law.
<b>Effect</b>	An agreement is not always a binding on the concerned parties.	A contract is always concluded and binding on the concerned parties.
<b>Scope</b>	All agreements are not contracts.	All contracts are agreements.

**Question 11] Distinguish between: Void Agreement & Void Contract**

**Ans.:** Following are the main points of distinction between void agreement & void contract:

Points	Void Agreement	Void Contract
<b>Meaning</b>	An agreement not enforceable by law is known as void agreement.	When a contract ceases to be enforceable at law, it becomes a void contract.
<b>What is</b>	It is an agreement.	It is a contract.
<b>Status</b>	It never takes form of a contract. It is a nullity since from the very beginning.	When it is formed it is perfectly valid. Subsequently it becomes a nullity.

**OFFER & ACCEPTANCE****Question 12] Define: Offer/Proposal**

**Ans.:** **Proposal [Section 2(a)]:** A person is said to have made a proposal, when he signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence.

The person making the offer is known as the **offeror, proposer or promisor**.

The person to whom the offer is made is called as **offeree, proposee or promisee**.

**Question 13] Write a short note on: Kinds of offer**

**Ans.:**

- (1) **Express Offer:** When offer is made by express words, spoken or written it is known as express offer.
- (2) **Implied Offer:** An offer may be inferred from the circumstance of the case or conduct of the parties. This is known as implied offer.
- (3) **Specific Offer:** When offer is made to definite person or definite group of persons it is known as specific offer. Specific offer is also known as special offer.
- (4) **General Offer:** When an offer is made to public or world at large it is called as general offer.

**Question 14] Explain the rules relating to an offer, as provided in the Indian Contract Act, 1872.**

**Ans.:** Following are various rules relating to valid offer:

- (1) **Offer must be capable of creating legal relationship:** Social invitation cannot be called as offer in legal terms because they create social obligation which are not enforceable by law.

- (2) **Offer must be in clear words:** That is to say offer must be certain, definite & unambiguous. If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.
- (3) **An offer may be distinguished from**
- A declaration of intention or an announcement.
  - An invitation to make an offer or to do business.
- (4) **Offer must be communicated:** There can be no acceptance unless the offer is communicated to the offeree by the offeror.
- (5) **Offer must be made with a view of obtaining the assent.**
- (6) **Offer should not contain a term the non-compliance of which may be assumed to amount to acceptance.**

**Question 15]** An auctioneer advertised in the newspaper that a sale of office furniture will be held at Bangalore. Ajay, a broker of Mumbai, reached Bangalore on the appointed date and time. But the auctioneer withdrew all the office furniture from the auction sale. The broker sued for his loss of time and expenses. Will he succeed? CS (Foundation) – Dec 2003 (5 Marks)

**Ans.:** No. Such an auction is not an offer; it is only an invitation to offer. In a decided case of **Harris v. Nickerison** an advertisement for an auction sale does not even bind the auctioneer to hold the auction and the prospective bidders have no legal right to complaint for loss of time and money in coming to the advertised place of the sale.

In the given problem also, Ajay will not succeed in getting compensation from the auctioneer.

**Question 16]** Write a short note on: Cross Offer

**Ans.:** When two parties make identical offers to each other, in ignorance of each others offer, the offers are cross offers. Making cross offers does result into valid contract, as there is only offer by each party but there absence of acceptance to offer.

**Question 17]** Write a short note on: Counter Offer

**Ans.:** Offer to an original offer is known as counter offer. When counter offer is made original offers come to an end.

*Example:* Pavan says to Chetan will you purchase my car for ₹ 50,000.

Chetan replies - "will you sale it for ₹ 45,000?" Reply of Chetan is counter offer and original offer of Pavan comes to an end.

**Question 18]** Define: Acceptance

**"Acceptance is to offer what a lighted match is to a trail of gunpowder".**

CS (Foundation) – June 2002 (5 Marks)

**Ans.:** Acceptance [Section 2(b)]: A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something.

**Offer is a train of gunpowder while acceptance is lighted match:** After offer is accepted then only it becomes contract. So an offer may laps for want of acceptance or be revoked before acceptance.

**Question 19]** Describe the general rule regarding 'acceptance of an offer'

CS (Foundation) – June 2001 (6 Marks)

**Ans.:** Following are rules for valid acceptance.

- (1) Acceptance must be absolute and unqualified.
- (2) Acceptance must be communicated to the offeror. Mere mental acceptance is not acceptance.

- (3) Acceptance must be according to the mode prescribed/usual and reasonable mode.
- (4) Acceptance must be given within a prescribed time. Acceptance cannot precede an offer.
- (5) Acceptance must show an intention on the part of the acceptor to fulfil terms of the promise.
- (6) Acceptance must be given by the party to whom the offer is made.
- (7) Acceptance must be given before the offer lapses or offer comes to an end.
- (8) Acceptance cannot be implied from silence.

**Question 20]** Amar offers by advertisement a reward of ₹ 1,000 to anyone who returns his lost bag. Bahadur finds the bag and brings it to Amar, without having knowledge of the offer of reward. Is Bahadur entitled to the reward? Give reasons. CS (Foundation) – June 2009 (5 Marks)

**Ans.:** An offer can be accepted only by a person who knows about it. In case of general offer, it could be accepted by anyone, provided the person was aware about the offer. Bahadur restored the bag but knew nothing about the offer of reward. He, therefore, could not have been accepted it and hence he cannot claim the reward.

**Question 20A]** A young boy ran away from his father's home. His father issued a pamphlet offering a reward of ₹ 5 lakh to anybody who would bring the boy home. Arun saw the boy at a railway station and sent an e-mail to the boy's father.

- (i) Is Arun entitled for reward?
- (ii) In the light of the above case, explain the rules governing offer.

CS (Executive) – Dec 2016 (5 Marks)

**Ans.:** The communication of the offer may be general or specific. Where an offer is made to a specific person it is called specific offer and it can be accepted only by that person. But when an offer is addressed to an uncertain body of individuals *i.e.* the world at large, it is a general offer and can be accepted by any member of the general public by fulfilling the condition laid down in the offer.

A young boy ran away from his father's home. The father issued a pamphlet offering a reward of ₹ 500 to anybody who would bring the boy home. The plaintiff saw the boy at a railway station and sent a telegram to the boy's father. It was held that the handbill was an offer open to the world at large and was capable to acceptance by any person who fulfilled the conditions contained in the offer. [*Harbhajan Lal vs. Harcharan Lal* (AIR 1925 All. 539)]

The plaintiff substantially performed the conditions and was entitled to the reward offered. Same rule will also apply for reply through e-mail and thus Arun is entitled to reward.

**Question 21]** When communication 'offer' & 'acceptance' is complete?

**Ans.: Communication when complete [Section 4]:** The communication of a proposal is complete when it becomes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete-

- ◆ As against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor
- ◆ As against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete-

- ◆ As against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;
- ◆ As against the person to whom it is made, when it comes to his knowledge.

**Question 22] When an offer does come to an end?****What are the various modes of revocation of offer as per Indian Contract, 1872.****CS (Executive) - Dec 2014 (5 Marks)****Ans.:** Offer may laps or come to an end by various modes as given below:

- (1) Offer may come to an end by communication of notice of revocation by the offeror at any time before acceptance.
- (2) If the offeree does not accept the offer within given time or if no time is given, then within reasonable time.
- (3) If condition precedent is not fulfilled then offer may come to an end.
- (4) Offer may come to an end by death or insanity of the offeror.
- (5) When counter offer is made original offers come to an end.
- (6) If an offer is not accepted according to the prescribed made.
- (7) Offer may come to an end due to change in law.

**Question 22A] State the difference in rules of making offer and acceptance when the mode of making the same varies from post to telephone and e-mail as governed by the Information Technology Act, 2000.****CS (Executive) - Dec 2016 (5 Marks)****Ans.: Contracts by Post:** Contracts by post are subject to the same rules as others, but because of their importance, these are stated below separately:

- (a) An offer by post may be accepted by post, unless the offeror indicates anything to the contrary.
- (b) An offer is made only when it actually reaches the offeree and not before, *i.e.*, when the letter containing the offer is delivered to the offeree.
- (c) An acceptance is made as far as the offeror is concerned, as soon as the letter containing the acceptance is posted, to offerors correct address; it binds the offeror, but not the acceptor. An acceptance binds the acceptor only when the letter containing the acceptance reaches the offeror. The result is that the acceptor can revoke his acceptance before it reaches the offeror.
- (d) An offer may be revoked before the letter containing the acceptance is posted. An acceptance can be revoked before it reaches the offeror.

**Contracts over the Telephone:** Contracts over the telephone are regarded the same in principle as those negotiated by the parties in the actual presence of each other. In both cases an oral offer is made and an oral acceptance is expected. It is important that the acceptance must be audible, heard and understood by the offeror. If during the conversation the telephone lines go 'dead' and the offeror does not hear the offerees word of acceptance, there is no contract at the moment. If the whole conversation is repeated and the offeror hears and understands the words of acceptance, the contract is complete. [*Kanhaiyalal vs. Dineshwarchandra* (1959) AIR, M.P. 234]

**CONSIDERATION****Question 23] What do you understand by term consideration under the Indian Contract Act, 1872?****CS (Foundation) - June 1999 (6 Marks)**

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

In simple words we can say that, - Consideration means, "**Something in return**" (*quid pro quo*). Without consideration there is no contract. Contract without consideration is known as *nudum pactum*.

A valuable consideration in the sense of the law may consist either in some:

- ◆ Right
- ◆ Interest
- ◆ Profit
- ◆ Forbearance
- ◆ Detriment
- ◆ Loss
- ◆ Responsibility

**Question 24] No Consideration, no contract; subject to certain exceptions. Explain briefly.**

CS (Executive) – Dec 2015 (5 Marks)

**Ans.:** Consideration is one of essential element of valid contract. Without consideration there is contract. Contract without consideration is known as *nudum pactum*.

**No consideration, no contract [Section 25]:** In following cases even if there is no consideration contracts are valid.

- (1) Agreement made on account of natural love and affection. If they are written & duly registered.
- (2) Compensation for voluntary services.
- (3) Promise to pay time barred debt made in writing and signed by the person liable to pay the amount.
- (4) Completed gifts.
- (5) No consideration is required to make an agency.
- (6) In case of charitable subscription, if a person (promisor) promises to pay certain amount and on the basis of that promise, other person (promisee) incurs liability, then promisor is bound to pay the amount promised, even if there is absence of consideration.

**Question 24A] X and Y are husband and wife, respectively. X, by a registered document, after referring to quarrels and disagreement between himself and his wife Y, promised to pay his wife, a sum of money for her maintenance and separate residence.**

**Whether this document is a contract enforceable by law? Give reasons with reference to decided case law, if any.**

CS (Executive) – Dec 2015 (5 Marks)

**Ans.:** Consideration is one of essential element of valid contract. Without consideration there is contract. Contract without consideration is known as *nudum pactum*. However, there are certain exception to the rule that “no consideration, no contract”.

One of the exception is “agreement made on account of natural love and affection which are written & duly registered”.

As per facts given in case husband had promised to pay wife a sum of money for her maintenance and separate residence which is duly registered but frequent quarrels between them show absence of natural love and affection and hence it is not valid contract enforceable by law.

**Question 25] “Gratuitous promises are not enforceable by law.” Explain the statement.**

CS (Foundation) – June 2005 (5 Marks)

**Ans.:** A promise to contribute to charity, though gratuitous, would be enforceable, if on the faith of the promise, the promisee is put to some detriment and the promisor was aware of the fact. In such case promisor is liable to pay promised amount of subscription. [*Kedar Nath vs. Gorie Mohan*]

**Question 26]** Anurag promises to pay ₹ 11,000 to the management committee of a school by way of a donation. The management committee, on the basis of Anurag's promise, gets a Water Purifier System (Acquaguard) installed in the school at a cost of ₹ 8,000 on credit. Now, Anurag refuses to pay the donation. What is the remedy available to the management committee of the school? Give reasons.

CS (Foundation) - Dec 2005 (5 Marks)

**Ans.:** In case of charitable subscription, if a person (promisor) promises to pay certain amount and on the basis of that promise, other person (promisee) incurs liability, then promisor is bound to pay the amount promised, even if there is absence of consideration.

The contract is binding on Anurag because the management committee has undertaken liability on the faith of Anurag's promise.

**Question 27]** Discuss the legal rules as to consideration.

**Ans.:** Legal rules as to consideration are as follows:

- (1) Consideration must move at the desire of the promisor.
- (2) Consideration may move from the promisee or any other person.
- (3) Consideration may be in form of an act, abstinence or forbearance or a return promise.
- (4) Consideration may be past, present or future.
- (5) Consideration need not be adequate.
- (6) Consideration must be real and not illusory.
- (7) Consideration must not be something which the promisor is already bound to do.
- (8) Consideration must not be illegal or opposed to public policy.

**Question 28]** Fire breaks out in A's building, B, a passerby, brings some buckets of water and saves A's Property from fire, intending to do so gratuitously. Later on, B claims compensation from A on the ground that A has enjoyed the benefit of his service. Will B succeed? Give reasons.

CS (Foundation) - Dec 1998 (5 Marks)

**Ans.:** No, B will not succeed because, consideration must move at the desire of the promisor. In this case, B has saved A's property without any intention of charging for his services. He cannot claim any compensation.

**Question 29]** Ajay gifted whole of his property to his daughter on the condition that she should pay ₹ 200 per month to her uncle (father's brother). Later, she refused to pay her uncle on the ground that she did not receive any consideration from her uncle. Is she justified?

CS (Foundation) - Dec 2001 (4 Marks)

**Ans.:** Consideration may move from the promisee or any other person. It is not necessary that the consideration must be from promisee. It is immaterial who has furnished it, whether promisee, or any other person. In the given case, consideration is moving from Ajay to daughter for the promise to pay ₹ 200 to uncle. Therefore, his daughter is not justified.

**Question 30]** Anand is a heart patient. He goes to a heart institute and deposits ₹ 2 lakh, the fixed charges for the operation. But before operation, the concerned doctor informs him that he will operate upon him correctly only if the patient promises to pay him ₹ 50,000 more. Anand agrees to pay. However, after successful operation, Anand refuses to pay this extra amount. Now the doctor files a suit against the patient for breach of contract. Will the doctor succeed? Give reasons.

CS (Foundation) - Dec 2004 (5 Marks)

**Ans.:** Consideration must not be something which the promisor is already bound to do. The performance of legal obligation is no consideration. In the given case, the doctor having accepted to perform the operation

is bound to render his best professional services. Thus, if there is a pre-existing obligation between the promisor and promisee, a fresh promise to perform the existing obligation will be void for want of valid consideration.

**Question 31] What is meant by 'privity of contract'? Discuss briefly State the exception to privity of contract.**  
CS (Executive) – Dec 2015 (5 Marks)

**Ans.:** Only party to contract can sue each other or only party to contract impose obligation on each other.

**Exception to the rule that a stranger to a contract cannot sue:** In following cases stranger to contract can sue to the parties to the contract.

- (a) **Beneficiary in case of contract of trust:** In the case of contract of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- (b) **Family Settlements:** In the case of a family settlement, if the terms of the settlement are reduced into writing the members of family who originally had not been parties to the settlement, any enforce the agreement. Similarly, in the case of certain marriage contracts, a female member can enforce a provision for marriage expenses made on the partition of the Hindu Undivided Family.
- (c) **Assignee:** An assignee under an assignment made by the parties, or by the operation of law can sue upon the contract for the enforcement of his rights, title and interest.
- (d) Principal can sue in case of contract entered through agent.

## CAPACITY TO CONTRACT

**Question 32] Who are competent to make a contract?**

**Write a short note on: Person disqualified from entering into contract**

CS (Foundation) – June 2009 (5 Marks)

**Ans.:** As per **Section 10**, one of the essential elements of valid contract is that, the parties must be competent to contract. Capacity to contract means competence of persons to enter into a valid contract.

**Who are competent to contract [Section 11]:** Every person is competent to contract if he fulfils all following three qualifications:

- (a) He is major.
- (b) He is of sound mind.
- (c) He has not been disqualified to contract under any law

Any person who does not fulfil the conditions laid down in Section 11 is disqualified from entering into contract.

**Question 33] Write a short note on: Position of minor as regards his agreements**

**Examine the legal position of (i) a minor promisor (ii) a minor promisee and (iii) minor as agent.**

CS (Foundation) – June 2000 (6 Marks)

**Ans.:** Position of minor as regards his agreements may be summed up as under:

- (1) An agreement with or by a minor is void and in-operative *ab initio*. Minor cannot be promisor.
- (2) Minor can be a promisee or beneficiary.
- (3) Minor cannot rectify the agreement, which was entered during the minority on attaining the age of majority.
- (4) Minor can always plead minority.
- (5) No specific performance can be brought against agreement with minor.
- (6) Minor cannot enter into a contract of partnership. But he may be admitted to the benefits of an already existing partnership.

- (7) Minor cannot be adjudicated an insolvent.
- (8) Minor can be agent, but cannot be principal.
- (9) A minor is liable in tort (tort means civil wrong). But where a tort arises out of a contract a minor is liable.
- (10) The guardian of minor shall not be liable for acts of minor.
- (11) A minor can be admitted as a member in a company if shares are fully paid.
- (12) A minor cannot be a guarantor.
- (13) A minor can be an apprentice provided he is of at least 14 years of age.
- (14) A minor can hold property.

**Question 34]** A, is 16 years of age. He lends ₹ 1,00,000 to B on the strength of a mortgage executed in his favour. Is the borrower liable to repay the money? Give reasons.

CS (Foundation) - June 1995 (5 Marks)

**Ans.:** There is nothing in the Contract Act, 1872 which prevents a minor from being a promisee or transferee. The Law does not regard a minor as incapable of accepting a benefit.

The borrower must repay the money to the minor. A minor can be a promisee or transferee and he can enforce an agreement which is for his benefit in that capacity against third parties. Therefore, he can recover the money advanced by him.

**Question 35]** Explain the legal position of a minor under the Indian Contract Act, 1872 for necessities supplied to him.

CS (Foundation) - June 2005 (5 Marks), Dec 2007 (5 Marks)

Explain, with suitable examples, the circumstances under which a minor's estate is liable to reimburse for necessities supplied to him.

CS (Foundation) - Dec 2005 (5 Marks)

**Ans.:** A minor is liable to pay out of his property for "necessaries" supplied to him. It is to be noted that minor is **not personally liable**, but what is liable is - his 'property'.

**Necessaries:** The term 'necessaries' is not defined in the Indian Contract Act, 1872.

The **English Sale of Goods Act, 1893**, defines it in Section 2 as, "goods suitable to the condition in life of such infant or other person, and to his actual requirement at the time of sale and delivery." Such goods need not necessarily belong to a class of useful goods, but they must be:

- Suitable to the position and financial status of the minor, and
- Necessaries both at the time of sale and at the time of delivery.

**Necessaries include:**

- (1) **Necessary Goods:** Necessary goods are not restricted to articles, which are required to maintain a bare existence, such as bread and clothes, but include articles, which are reasonably necessary to the minor having regard to his station in life. A watch and a bicycle may well be considered to be necessities. An engagement ring may be a necessary, but not a vanity bag bought for the minor's fiancée.
- (2) **Services rendered:** Certain services rendered to a minor have been held to be necessities. These include:
  - Education,
  - Training for a trade,
  - Medical advice,
  - Legal advice,
  - Provision of a funeral for deceased husband of a minor widow, and
  - A house given to a minor on rent for the purpose of living and continuing his studies.

As regards contracts which are for the supply of necessities and which are beneficial to the minor, the private estate of the minor is liable.

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

**Question 36]** Teji, a minor, broke his right leg in a football match. He engaged Curewell, a doctor, to set it. Does the doctor have valid claim for his services? Give reasons.

CS (Foundation) - Dec 1994 (5 Marks), June 2001 (5 Marks)

CS (Foundation) - June 2004 (5 Marks)

**Ans.:** A minor is liable to pay out of his property for "necessaries" supplied to him. It is to be noted that minor is not personally liable, but what is liable is - his 'property'.

As regards contracts which are for the supply of necessities and which are beneficial to the minor, the private estate of the minor is liable. Thus, doctor have valid claim for his services.

**Question 37]** Write a short note on: Position of unsound mind minor as regards his agreements

**Ans.:** One of the essential conditions of competency of parties to a contract is that they should be of sound mind. A person who is of unsound mind cannot make a contract.

A person is of un-sound mind if:

- An idiot
- A lunatic
- A drunken or intoxicated person.

**Liability for necessities supplied:** Persons of unsound mind are liable for necessities supplied to them. But even in such cases, no personal liability attaches to them. It is only their estate which is liable.

**Question 38]** Discuss the contractual capacity of following:

- (1) Body corporate/companies
- (2) Alien enemies
- (3) Corporations

**Ans.:**

(1) **Body Corporate/Companies:** A Company and any other body corporate can enter into only such contracts as are permitted by their constitution i.e. Memorandum of Association. If it exceeds its powers from its object clause in the Memorandum, the contract is *ultra vires* (beyond the power) and is void. Further it cannot enter into contracts of a strictly personal nature, as it is an artificial and not a natural person.

(2) **Alien Enemies:** An alien (the subject of a foreign state) is a person who is not a citizen of India. He may be:

- (i) An alien friend (an alien whose State is at peace with the Republic of India) or
- (ii) An alien enemy (an alien whose State is at war with the Republic of India)

**Contracts with an alien friend, subject to certain restrictions, are valid.**

**Contracts with an alien enemy, may be studied under two heads, namely -**

- ◆ **Contracts during the war:** 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.
- ◆ **Contracts made before the war:** Contracts made before the war may either be suspended or dissolved. They will be dissolved if they are against the public policy or if their performance

would benefit the enemy. For this purpose even an Indian who resides voluntarily in a hostile country, or who is carrying on business there would be treated as an alien enemy.

- (3) **Corporations:** A Corporation is an artificial person created by law, having a legal existence apart from its members. It may come into existence by a Special Act of the Legislature or by registration under the Companies Act, 2013. For example RBI is corporation as it is formed under Special Act, namely Reserve Bank of India Act, 1934.

As regards a statutory corporation, i.e. a corporation formed by a Special Act of the Legislature, its contractual capacity is limited by the Statute governing it.

**Question 39] Explain the legal position regarding transaction with pardanashin woman.**

**CS (Foundation) – Dec 1999 (10 Marks)**

**Ans.:** *Pardanashin* woman is a lady who is totally isolated from the ordinary social intercourse. She can avoid any contract entered by her on the plea of undue influence and it is for the other party to prove that no undue influence was used on her.

The other party must prove that:

- The nature of contract was fully explained to her,
- She had free and independent advise &
- She exercised her free will.

The protection granted also extended to illiterate and ignorant ladies, who are equally exposed to such danger and risks.

## FREE CONSENT

**Question 40] What is consent? When consent is said to be free?**

**Ans.:** Consent means acquiescence or act of assenting to an offer. One of the essential elements of valid contract is that there must be free consent of the parties.

Consent is said to be free if it is not caused by coercion, undue influence, fraud, misrepresentation and mistake.

**Question 40A] Mention the main flaws in a contract.**

**CS (Executive) – June 2015 (3 Marks)**

**Ans.:** There may be the circumstances under which a contract made under these rules may still be bad, because there is a flaw, vice or error somewhere.

The chief flaws in contract are: (i) Incapacity (ii) Mistake (iii) Misrepresentation (iv) Fraud (v) Undue Influence (vi) Coercion (vii) Illegality (viii) Impossibility

**Question 41] Write a short note on: Coercion**

**Ans.:** “Coercion” defined [Section 15]: When a person is compelled to enter into a contract by the use of force by the other party, coercion is said to be employed. Coercion is the committing or threatening to commit any act forbidden by the Indian Penal Code, 1860. In English law coercion is termed as “Duress”.

**Effect of Coercion:**

- (1) When an agreement is caused by coercion, the agreement is a contract voidable at the option of the party whose consent was so obtained. But, it is to be noted that until contract is avoided by party whose consent was so obtained, contract has to be treated as valid and in meantime third party acquires anything obtained by way of coercion in good faith and for value, he gets good title.
- (2) A person to whom money has been paid or anything is delivered under coercion must repay or return it.

**Question 42] Write a short note on: Undue influence**

**Ans.: "Undue influence" defined [Section 16(1)]:** A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

**Presumption of undue influence:** The following relationship usually raises a presumption of undue influence :

- ◆ Parent & child
- ◆ Guardian & ward
- ◆ Trustee & beneficiary
- ◆ Religious adviser & disciple
- ◆ Doctor & patient
- ◆ Solicitor & client
- ◆ Finance & financee

**No presumption of undue influence in the relationship of:**

- ◆ Landlord & tenant
- ◆ Creditor & debtor
- ◆ Husband & wife

**Essentials of under influences:**

- (1) There must be relations between parties, which raise presumption of undue influence.
- (2) One party must be in a position to dominate the will of other.
- (3) Person dominating must obtain unfair advantage over the other.

**Effect of undue influence:**

- (1) When consent to an agreement is obtained by undue influence, the agreement is a contract voidable at the option of the party whose consent was so obtained. But, it is to be noted that until contract is avoided by party whose consent was so caused, contract has to be treated as valid and third party acquires anything obtained by way of undue influence in good faith and for value, he gets good title.
- (2) Such contract may be set aside by Court.

**Question 43] Distinction between: Coercion & undue influence**

**CS (Foundation) - June 2002 (5 Marks), Dec 1998 (5 Marks)**

**Ans.:** Following are main points of distinction between coercion & undue influence

Points	Coercion	Undue influence
<b>Meaning</b>	When a person is compelled to enter into contract by the use of force by other party coercion is said to be employed.	A contract is said to be induced by undue influence, where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
<b>Purpose</b>	The purpose of coercion is to obtain the consent of the other party.	The purpose of undue influence is to obtain an unfair advantage.
<b>Character</b>	Coercion is mainly of a physical character.	Undue influence is mainly of moral character.
<b>Punishment</b>	The party using coercion is liable under Indian Penal Code, 1868.	The party exercising undue influence is not criminally liable under the Indian Penal Code, 1868.
<b>Criminal Act</b>	Coercion involves Criminal Act.	Undue influence does not involve Criminal Act.

Points	Coercion	Undue influence
Relation-ship	In case of coercion relation between parties is not important at all.	In undue influence nearer relationship between parties are important.

**Question 44]** 'A' applies to a banker of a loan at a time where there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Whether the contract is induced by undue influence? Decide.

CA (PE-II) - Nov 2002 (4 Marks)

**Ans.:** As money is in short supply, interest rates are likely to go up. The banker is demanding for a higher rate of interest in the ordinary course of business. Further, **No presumption** of undue influence arise in the relationship of banker & client. It is not a case of undue influence, and hence can be enforced. Mr. A is liable to pay the interest at high rate as agreed.

**Question 45]** Write a short note on: Misrepresentation

**Ans.:** **Misrepresentation [Section 18]:** Misrepresentation is a false statement which the person making it honestly believes to be true.

**Requirement of misrepresentation:**

- ◆ It must be a representation of a material fact.
- ◆ It must be made before conclusion of contract.
- ◆ It must be made with the intention that it should be acted upon by the person to whom it is addressed.
- ◆ It must actually have been acted upon and must have induced the contract.
- ◆ It must be wrong but the person who made it honestly believed it to be true.
- ◆ It must be made without any intention to deceive the other party.

**Consequences of misrepresentation:** The aggrieved party, in case of misrepresentation by the other party can:

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

**Question 46]** Ajeet, owner of an apple orchard, believes that all the apple trees in his orchard are fruit-bearing trees. However, he has no sufficient ground for his belief. Even then, Ajeet states to Baljeet that his orchard has all fruit-bearing trees. Induced by this statement, Baljeet purchases the orchard. Later on, it is found that only 50% trees are fruit-bearing. Now, Baljeet files a suit for the repudiation of the contract. Will Baljeet succeed? Give reasons.

CS (Foundation) - June 1999 (5 Marks)

**Ans.:** Misrepresentation is a false statement which the person making it honestly believes to be true. In given case statement made by Ajeet will be treated as 'misrepresentation' as he has no sufficient ground for his belief that all the apple trees in his orchard are fruit-bearing trees but in fact only 50% trees are fruit bearing. Thus, Ajeet has made a false statement which he honestly believes to be true; hence misrepresentation. This contract is voidable at the option of Baljeet and he can avoid the contract.

**Question 47]** Write a short note on: Fraud

CS (Foundation) - June 1999 (5 Marks)

**Ans.:** **Fraud [Section 17]:** Fraud means and includes any of the following acts committed by a party to a contract with intent to deceive other party or induce him to enter into the contract.

- ◆ When person knowingly makes a false statement.

- ◆ When person actively conceals material fact.
- ◆ When person makes a promise without any intention of performing it.
- ◆ When person does any act or omission as to law specially declared to be fraudulent.

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

- (1) He can rescind the contract. Where he does so, he must act within a reasonable time. If in the interval, an innocent third party has acquired an interest in the property for value, he cannot rescind the contract.
- (2) He can insist on the performance of the contract on the condition that he shall be put in the condition in which he would have been if the representation made had been true.

**Question 48]** K, who is trying to sell an unsound horse, forges a Veterinary Surgeon's certificate stating the horse to be sound and pins it on the stable door. P comes to examine the horse but the certificate goes unnoticed by him. He buys the horse and finds later on the horse to be unsound. He wants to avoid the agreement under the plea that he has defrauded. Will he succeed?

CS (Foundation) - June 2006 (5 Marks)

**Ans.:** P will not succeed for though K attempted to defraud by putting up the surgeon's forged certificate as to the soundness of the horse, P was not influenced by it. P bought the horse after his examination and not on the basis of the certificate. **Section 17** says that an attempt at deceit which does not deceive is not fraud. Hence P will not be able to set aside the purchase of horse.

**Question 49]** Silence of the party - Whether amount to fraud? Discuss.

**Ans.:** As a general rule, mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to other party or to give him the whole information in his possession. This will be so, even if such disclosure would have an important bearing on the decision taken by the other party in relation to the contract.

**When silence amounts to fraud?** Silence amounts to fraud in following cases:

- (1) If having regard to the circumstances of the case, it is the duty of the person keeping silence to speak, then, silence shall amount to fraud. Duty to speak arises when one party response trust and confidence in other party.
- (2) Where silence is, in itself, equivalent to speech.
- (3) If seller fails to inform the buyer as to a latent defect, his silence amounts to fraud.

**Question 50]** Distinguish between: Misrepresentation & Fraud

CS (Foundation) - June 2004 (5 Marks), Dec 2002 (5 Marks)

CS (Foundation) - Dec 2009 (5 Marks)

**Ans.:** Following are main points of distinction between fraud and mis-representation.

Points	Fraud	Misrepresentation
<b>Meaning</b>	As per <b>Section 17</b> , fraud means and includes any of the following acts committed by a party to a contract with intent to deceive other party or induce him to enter into the contract. <ul style="list-style-type: none"> <li>◆ When person knowingly suggests a fact, which is not true.</li> <li>◆ Active concealment of fact.</li> <li>◆ A promise made without any intention of performing it.</li> </ul>	Misrepresentation is a false statement which the person making it honestly believes to be true.

Points	Fraud	Misrepresentation
	♦ Any such act or omission as to law specially declared to be fraudulent.	
<b>Intention to deceive</b>	Fraud is deliberate or wilful. There is clear intention to deceive the other party.	It is an innocent wrong, without any intention to deceive.
<b>Belief</b>	The person making the false statement does not believe it to be true.	The person making the statement believes it to be true or does not know that it is false.
<b>Remedy</b>	It entitles the aggrieved party to claim damages in addition to the right of rescinding the contract.	It only gives a right to avoid the contract without any claim for damages.
<b>Punishment</b>	In certain cases, it may lead to prosecution for an offence of cheating under the <b>Indian Penal Code, 1860</b> .	It is not a criminal act, and hence not punishable.

**Question 51] Write a short note on: Mistake**

**Distinction between: Unilateral & Bilateral mistake**

**Ans.:** Mistake may be defined as an erroneous belief about something.

(1) **Mistake of law:** Mistake of law may be:

- Mistake of law of country:** A party cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law. A mistake of law is therefore, no excuse.
- Mistake of foreign law:** Mistake of foreign law is excusable since it is treated as if it were a mistake of fact. When there is mistake of law of foreign country agreement is void.

(2) **Mistake of fact:** Mistake of fact may be:

- Bilateral mistake:** Where both the parties to an agreement are under mistake as to matter of fact essential to the agreement, there is bilateral mistake.
- Unilateral mistake:** When in a contract only one of the parties is at mistake it is called as unilateral mistake. A unilateral mistake is not allowed as a defence in avoiding a contract.

(3) **Mistake as to identity of person:** If there is mistake as to identity of person then contract become voidable. In such case if any person has received any benefit from other person then he must restore it to such other person.

**Question 52] Avdesh contracts to sell a piece of silk to Bhupesh. Bhupesh thinks it is Chinese silk. Avdesh knows that Bhupesh thinks so, but Avdesh knows that it is English silk. Avdesh does not correct Bhupesh's impression. Subsequently, Bhupesh discovers that it is not Chinese silk. Can he repudiate the contract? Discuss.**

**CS (Foundation) - June 2009 (5 Marks)**

**Ans.:** When in a contract only one of the parties is at mistake it is called as unilateral mistake. A unilateral mistake is not allowed as a defence in avoiding a contract. Hence, Bhupesh cannot repudiate the contract.

## LEGALITY OF OBJECT

**Question 53] When consideration or object is unlawful?**

**What do you understand by 'unlawful consideration' and what would be its impact on an agreement?**

**CS (Foundation) - June 2002 (5 Marks)**

**Ans.:** What consideration and objects are lawful, and what not? [Section 23]: One of the essential elements of valid contract is that - the object of agreement must be lawful. Thus, if object of an agreement is the performance of an unlawful act, the agreement is unenforceable. The consideration or object of an agreement is unlawful in following cases and agreement is void.

- (1) If object or consideration is forbidden by law.

- (2) If object of agreement is of such nature that, if permitted, it would defeat the provision of any law.
- (3) An agreement, which is made for a fraudulent purpose, is void.
- (4) When object or consideration of an agreement involves or implies injury to the person or property of another.
- (5) If the courts regards it as immoral.

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**Question 54] Write a short note on: Unlawful Agreement**

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**Ans.:** An unlawful agreement is agreement, which is not enforceable by law. It is void *ab initio* and is destitute of legal effects altogether. **It affects immediate parties only** and has no further consequences.

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**Question 55] Write a short note on: Illegal Agreement**

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**Ans.:** An illegal agreement is one which transgresses some rate of basic public policy or which is criminal in nature or which is immoral. Illegal agreement is not only void as between immediate parties but has this further effect that only the collateral transactions to it also become void.

- (1) **Reciprocal promise to do things legal, and also other things illegal [Section 57]:** Where person reciprocally promise, firstly, to do certain things which are legal and secondly, to do certain other things which are illegal, the first set of promises is a contract, but second is a void agreement.

*Example:* A and B agree that A shall sell B a house for ₹ 10,000, but that, if B uses it as a gambling house, he shall pay A ₹ 50,000 for it. The first set of reciprocal promises, namely, to sell the house and to pay ₹ 10,000 for it, is a contract. The second set is for an unlawful object, namely, B may use the house as a gambling house, and is a void agreement.

- (2) **Alternative promise, one branch being illegal [Section 58]:** In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

*Example:* A and B agree that A shall pay B ₹ 1,000, for which B shall afterwards deliver to A either rice or smuggled opium. This is a valid contract to deliver rice, and a void agreement as to the opium.

## AGREEMENTS OPPOSED TO PUBLIC POLICY

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**Question 56] Write a short note on: An agreement opposed to public policy**

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**Ans.:** An agreement is said to be opposed to public policy when it is harmful to the public welfare. Some of the agreements which are, or which have been held to be opposed to public policy and are unlawful are as follows.

- (1) Agreement of trading with enemy.
- (2) Agreement to commit crime.
- (3) Agreement which interfere with administration of justice.
- (4) An agreement not to prosecute an offender is an agreement for stifling prosecution and is unlawful.
- (5) Maintenance & Champerty:

Maintenance is an agreement to give assistance, financial or otherwise, to another to enable him to bring or defend legal proceeding when the person giving assistance has got no legal interest of his own in the subject matter.

Champerty is an agreement whereby one party is to assist another to bring an action for recovering money or property, and is to share in the proceeds of the action.

- (6) Agreement in restraint of legal proceedings.
- (7) Agreements curtailing period of limitation.
- (8) Sale of public offices & titles/trafficking in public offices and titles.

- (9) Agreement in restraint of parental rights.
- (10) Agreement restricting personal liberty.
- (11) Agreement in restraint of marriage.
- (12) Marriage brokerage agreement.
- (13) Agreement interfering with marital duties.
- (14) An agreement to defraud creditors or revenue authorities.
- (15) Agreement in restraint of trade.

**Question 57]** Arun promises to Barun, who is named as a witness in a suit against Arun, in consideration of Barun promises to abstain from the trial. Barun abstains, but Arun declines to make the payment. Can Barun recover the money? CS (Foundation) – Dec 1999 (5 Marks)

**Ans.:** One of the essential elements of valid contract is that the object and consideration is legal and is not opposed to public policy.

In this case, consideration for refraining any person from the trial of a suit is considered to be as opposed to public policy and the whole agreement is unlawful and void. Hence, Barun cannot recover the money.

**Question 58]** Amit promises to procure an employment for Bimal in a government department and Bimal promises to pay ₹ 5,000 to Amit for the same. Amit gets the said job for Bimal. However, Bimal refuses to pay the promised money to Amit who files a suit in the court of law to recover ₹ 5,000 from Bimal. Will Amit succeed? Give reasons. CS (Foundation) – Dec 2007 (5 Marks)

**Ans.:** Amit's promise to procure an employment for Bimal in a government department is an agreement opposed to public policy and unlawful, hence void. Thus, Amit will not succeed to recover ₹ 5,000.

**Question 59]** There was an agreement to lend ₹ 5 lakh to Bimla in consideration of her getting a divorce and marrying Govind, the lender. Is the agreement enforceable? Give reasons.

CS (Foundation) – Dec 2008 (5 Marks)

**Ans.:** Agreement which involves interfering with marital duties is opposed to public policy and unlawful, hence void. Hence, it is not enforceable.

**Question 60]** Amrit's wife Barkha paid ₹ 5,000 to Chandan to be given as a bribe to a jailor for procuring the release of her husband from jail. The jailor failed to procure the release. Can Barkha recover the amount? Give reasons. CS (Foundation) – June 2009 (5 Marks)

**Ans.:** Agreement which interfere with administration of justice is opposed to public policy and unlawful and hence void. Thus, Barkha cannot recover the amount of ₹ 5,000 paid to Chandan given as a bribe to a jailor for procuring the release of her husband from jail.

**Question 61]** "Every agreement in which anyone is restrained from exercising a lawful profession, trade or business of any kind is, to that extent, *void*." Discuss.

CS (Executive) – June 2014 (5 Marks), June 2016 (5 Marks)

**Ans.:** **Agreement in restraint of trade, void [Section 27]:** Every agreement, by which, anyone is retrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

**Exception to agreement in restraint of trade:** That is to say in following cases agreement even though in restraint of trade are valid:

- (1) **Employment Agreement:** An agreement of employment under which, employee agrees to serve a certain employer for certain duration, and that he will not serve anybody else during such period is a valid agreement.

- (2) **Sale of goodwill:** Where the seller of the goodwill of a business undertakes not to complete with the purchaser of the goodwill, the contract is enforceable provided the restraint appears to be:

- Reasonable as to territorial limits and
- The length of time.

*Example:* N was a inventor and a manufacturer of guns and ammunition. He sold his world-wide business to M and promised not to manufacture guns anywhere in the world for 25 years. The House of Lords held that the restraints was reasonable as it was necessary for the protection of company. [*Nordenfelt vs Maxim Nordenfelt Guns & Co.*]

- (3) **Restriction on existing partner:** Section 11(2) of the Partnership Act, 1932 permits to provide that a partner shall not carry on any business other than that of the firm while he is a partner.
- (4) **Restriction on outgoing partner:** Section 36(2) and Section 54 of the Partnership Act, 1932 provide that a partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within specified period or within specified limits. Such agreements are valid if the restrictions are reasonable.

## VOID AGREEMENT

**Question 62] State the various agreements which have been expressly declared to be void by the Indian Contract Act, 1872**

**Ans.: Void agreement [Section 2(g)]:** A void agreement is one, which is **not enforceable by law**. Such agreement does not give rise to any legal consequences and is void *ab initio*.

The following agreements have been expressly declared to be void by the Indian Contract Act, 1872:

Section	Nature of agreement
Section 11	Agreements by incompetent parties i.e. minor, idiot, persons of unsound mind.
Section 20	Agreements made under mutual mistake of fact.
Section 24	Agreements the consideration or object of which is unlawful in part.
Section 25	Agreements made without consideration.
Section 26	Agreement in restraint of marriage.
Section 27	Agreement in restraint of trade.
Section 28	Agreement in restraint of legal proceedings.
Section 29	Agreement the meaning of which is uncertain
Section 30	Agreement by way of wager.
Section 36	Agreement contingent on impossible events.
Section 56	Agreements to do impossible acts.

**Question 63] Distinguish between: Void Contract & Voidable Contract**

CS (Foundation) - Dec 1999 (5 Marks), Dec 2002 (5 Marks)  
CS (Foundation) - June 2008 (5 Marks)

**Ans.:** Following are the main points of distinction between void & voidable contract:

Points	Void Contract	Voidable Contract
<b>Meaning</b>	When a contract ceases to be enforceable at law, it becomes a void contract.	A contract which is enforceable by law at the option of one party, but not at the option of the other is known as voidable contract.
<b>Status</b>	A void contract cannot create any legal rights. It is a total nullity.	A voidable contract takes its full and proper legal effect unless it is disputed and set aside by the person entitled to do so.

Points	Void Contract	Voidable Contract
<b>Nature</b>	A void contract is valid when it is made. But subsequently it becomes void due to one reason or the other.	A contract may be voidable since very beginning or may subsequently become voidable.
<b>Rights</b>	A void contract does not provide any legal right to the parties to the contract.	A voidable contract gives right to the aggrieved party to rescind the contract and claim the damages, etc. in certain cases.
<b>Effect</b>	When a contract is void because of illegality its collateral transactions also becomes void.	A voidable contract does not affect the collateral transactions.

**Question 64] Distinguish between: Illegal Agreement & Void Agreement**

CS (Foundation) - Dec 2003 (5 Marks), June 2010 (5 Marks)

**Ans.:** Following are the main points of distinction between illegal & void agreement:

Points	Illegal Agreement	Void Agreement
<b>Meaning</b>	An agreement, which involves the transgression of, some rule of basic public policy and is criminal in nature or immoral.	A void agreement is one, which is not enforceable by law. Such agreement does not give rise to any legal consequences and is void <i>ab initio</i> .
<b>Collateral transaction</b>	Collateral transactions to an illegal agreement are not enforceable.	Collateral transactions to void agreement are enforceable.
<b>Punishment</b>	Parties may be punished for making illegal agreement.	Being void does not make a contract punishable.

**Question 64A] "An agreement to do an act impossible itself is void". Explain.**

CS (Executive) - June 2015 (5 Marks)

**Ans.: Agreement to do impossible acts [Section 56]:** An agreement to do an act impossible in itself is void.

*Contract to do act afterwards becoming impossible or unlawful:* A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

*Compensation for loss through non-performance of act known to be impossible or unlawful:* Where one person has promised to be something which he knew or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

**Illustrations:**

- A agrees with B to discover treasure by magic. The agreement is void.
- A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- A contract to marry B, being already married to C, and being forbidden by the law to which he is subject to practice polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.
- A contract to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- A contract 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 contract to act on those occasions becomes void.

**AGREEMENTS - MEANING OF WHICH IS UNCERTAIN****Question 65] Whether agreement of which meaning is uncertain are valid?**

**Ans.: Agreements void for uncertainty [Section 29]:** If the meaning of the agreement is not certain, such agreements are void. Thus, agreements must be in clear words.

**Question 66]** Anita agree to sell a flower pot to Babita at a price fixed by Sita. Is it a valid contract? Give reasons. CS (Foundation) – June 1998 (3 Marks)

**Ans.:** As per Section 27, if the meaning of the agreement is not certain, such agreements are void. Thus, agreements must be in clear words.

As per the facts given in case, the price is capable of being made certain and as there is no uncertainty. Thus, agreement is valid.

**Question 67]** Ajay agrees to sell his old car to Bijoy for ₹ 1 lakh or ₹ 80,000. Is it a valid contract? Give reasons. CS (Foundation) – June 2006 (5 Marks)

**Ans.:** As per Section 27, if the meaning of the agreement is not certain, such agreements are void. Thus, agreements must be in clear words.

In this case, there is nothing to show which of the two prices is to be taken into consideration. Hence, the agreement is void.

### WAGERING AGREEMENTS

**Question 68]** Write a short note on: Wagering agreements. CS (Foundation) – Dec 2001 (5 Marks)  
Discuss briefly whether an agreement by way of wager is a voidable contract. CS (Foundation) – Dec 2007 (5 Marks)

**Ans.: Agreements by way of wager, void [Section 30]:** Wagering agreement is an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party promise to pay if event does not happen. Wagering agreements are void.

*Example:* Rohit agrees to pay ₹ 500 to Sachin if India wins cricket match with Pakistan and Sachin agrees to pay ₹ 500 if Pakistan wins. This is wagering agreement and is void.

#### Essentials of a wagering agreement:

- (1) There must be a **promise to pay money or money's worth**.
- (2) The **event** must be **uncertain**.
- (3) Each party must stand to **win or lose**.
- (4) Neither party should have any control over the event.
- (5) Neither party should have any other interest (i.e. other than the sum or stake to be win or lose) in the event.

A **lottery** is a wagering agreement. However a lottery authorized by State Government is not wagering agreement.

#### Agreement not held as wager:

- (1) A crossword competition involving a good measure of skill for its successful solution.
- (2) According to Prize Competition Act, 1955, prize competitions in games of skill are not Wagers provided the amount of prize does not exceed ₹ 1,000.
- (3) An agreement to pay prize not exceeding ₹ 500 to the winner of a horse race not a wager.
- (4) A contract of insurance.
- (5) Share market transactions.
- (6) Games of skill.

**Effect of wagering agreements:** Wagering agreements have been expressly declared to be void in India. In State of Gujarat & Maharashtra they have been declared to be illegal. No suit can be brought for recovering anything alleged to be won on any wager.

**Suit to recover money deposited:** Sometimes parties to the wagering agreement deposit money with a person (called stakeholder). It is to be noted that winner cannot recover but a loser can recover his deposit from the stakeholder. [*Bridger vs. Savage*]

## CONTINGENT CONTRACT

**Question 69] Write a short note on: Contingent contract** CS (Foundation) – June 2000 (5 Marks)

**Ans.:** A contract may be divided into following two types:

- (1) **Absolute Contract:** It is contract in which performance does not depend upon any event or condition.
- (2) **Contingent Contract [Section 31]:** It is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

*Example 1:* Arun sends goods to Tarun on 'sale or return' basis. This is contingent contract depending on the act of the Tarun to accept or reject the goods.

*Example 2:* When someone takes fire insurance policy it is a contingent contract as liability of insurance company arises on when damages to the house by fire.

There are three essential characteristics of contingent contract:

- (1) Its performance depends upon the happening or non-happening in future of some event.
- (2) The event must be uncertain.
- (3) The event must be collateral/incidental to the contract.

**Question 70] A agrees to construct a swimming pool of B for ₹ 2,00,000. The payment is to be made by B on the completion of repair of swimming pool. Is this a contingent contract.**

CS (Foundation) – June 2000 (5 Marks)

**Ans.:** As per Section 31, Contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Construction of a swimming pool does not depend upon any event. Hence, it is not contingent contract. It is in fact absolute contract which is valid and enforceable.

**Question 71] State the rules relating to contingent contract.**

**Explain the provisions regarding contingent contracts.** CS (Foundation) – June 2003 (5 Marks)

**Explain the meaning of contingent contract and state the rules relating to such contracts.**

CS (Foundation) – June 2003 (5 Marks)

**Ans.:** Rules relating to contingent contracts are as follows:

- (1) **Enforcement of contracts contingent on an event happening [Section 32]:** Contingent contracts to do or not to do anything in an uncertain future event happens, cannot be enforced by law unless and until that event has happened.  
*Example:* 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) **Enforcement of contract contingent on an event not happening [Section 33]:** Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

*Example:* A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

- (3) **When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person [Section 35]:** If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

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

- (4) Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if the event does not happen or its happening becomes impossible before the expiry of that time. [Section 35]

*Example:* 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 the year, and becomes void if the ship is burnt within the year.

*Example:* A promise to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

- (5) **Agreements contingent on impossible events, void [Section 36]:** Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

*Example:* A agrees to pay B ₹ 1,000 if two straight lines should enclose a space. The agreement is void.

*Example:* A agrees to pay B ₹ 1,000 if B will marry A's daughter, C. C was dead at the time of the agreement. The agreement is void.

#### Question 72] Distinguish between: Wagering Agreement & Contingent Contract

**Ans.:** Following are main points of difference between a wagering agreement & contingent contract:

Points	Wagering Agreement	Contingent Contract
<b>Meaning</b>	Wagering Agreement is an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party promise to pay if event does not happen.	Contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.
<b>Reciprocal Promises</b>	A wagering agreement consists of reciprocal promises.	Contingent contract may not contain reciprocal promises.
<b>Nature</b>	A wagering agreement is essentially of a contingent nature.	Contingent contract may not be of a wagering nature.
<b>Void/valid</b>	A wagering agreement is void.	Contingent contract is valid.
<b>Interest</b>	In a wagering agreement, the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager.	In contingent contract the parties have other interest.
<b>Future Event</b>	In a wagering agreement the future event is the sole determining factor.	Contingent contract the future event is only collateral.

#### DISCHARGE OF CONTRACT

**Question 73] State the various methods of termination of contracts.**

CS (Foundation) – June 2004 (5 Marks)

CS (Executive) – Dec 2014 (5 Marks)

**Ans.:** Termination of contractual relationship between the parties is known as discharge of contract. A contract may be discharged by :

- ◆ Performance
- ◆ Agreement or consent
- ◆ Impossibility
- ◆ Lapse of time
- ◆ Operation of law
- ◆ Breach of contract

**Question 74] Write a short note on : Discharge by performance**

**Ans.:** When the parties to the contract fulfil their obligation within the time and in manner prescribed, contract is discharged by performance.

**Example:** A agrees to sale his Maruti 800 car to B for ₹ 50,000. When A delivers the car he is discharged and when B pays ₹ 50,000 he is discharged.

**Types of Performance:**

- (1) **Actual Performance:** When parties to contract actually fulfil the obligation arising under contract, it is known as actual performance.
- (2) **Attempted Performance/Tender:** If one of the party offers to perform but other party does not accept the performance, it is known as 'Attempted performance'. Party ready to perform is discharged from contract. Thus, Attempted performance or tender is equivalent to actual performance.

**Question 75] Write a short note on : Discharge by agreement or consent**

**Ans.:** A contract may be discharged by making further agreement or taking consent of the parties.

The rule of law in this regard is: *eodem modo quo quid constitutor eodem modo destitute* i.e. a thing may be destroyed in the same manner in which it is constituted.

Discharge by agreement may take place in following manner :

- (1) **Novation:** Novation takes place when new contract is substituted for already existing contract.
- (2) **Rescission:** When all or some of the terms of the contract are cancelled it is known as rescission.
- (3) **Alteration:** When terms of the contract are altered by mutual consent of the parties it is known as Alteration.
- (4) **Remission:** Remission means acceptance of a lesser fulfilment of promise made.
- (5) **Waiver:** When parties to the contract relinquish some or all rights arising under a contract it is known as waiver.
- (6) **Merger:** When inferior right merges into superior right it is known as merger.

**Question 76] A owes B ₹ 10,000. C, who is friend of A, pays to B ₹ 5,000 in full satisfaction of B's claim on A which B accepts. Can B now recover the balance from A? Give reasons.**

**CS (Foundation) - Dec 1995 (5 Marks), June 1998 (5 Marks)**

**Ans.:** Consideration may move from promise or any other person. In given case consideration has moved from C on behalf of A to B. Further, contract is discharged when creditor accept a lesser fulfilment of promise made, which is known as remission. Hence, A is discharged on payment of money by C to B.

**Question 77] Write a short note on : Discharge by lapse of time**

**Ans.:** The law relating to limitation is incorporated in the Limitation Act, 1963. Section 3 of the said Act provides that, any suit, appeal or application if made beyond period of limitation, it is the duty of the Court not to proceed with such suit. The Courts in India are bound by the specific provisions of Limitation Act, 1963. It specifies the limitation period of 3 years for suit's relating to contract. Thus, if promisee to the contract does not take action within period of 3 years then promisee is deprived of his remedy at law.

**Question 78] Write a short note on : Discharge by operation of law**

**Ans.:** Discharge by operation of law includes, discharge:

- (1) **By death or serious illness:** Where performance of contract involves personal skill or ability of the promisor, contract is discharged/terminated on the death or serious illness of promisor.
- (2) **By merger**
- (3) **By insolvency:** When a person is adjudged insolvent under the provisions of Insolvency Act, he is discharged from all liabilities incurred prior to his adjudication.
- (4) **By unauthorized alternation of the terms of a written agreement.**
- (5) **When rights & liabilities becoming vested in the same person.**

*Example:* A sells some goods to B for ₹ 20,000. B dies and as per his will all property of B is transferred to A. Contract between A & B is discharged.

**Question 78A] Write a short note on : Discharge by breach of contract**

**Write a short note on : Anticipatory breach of contract**

CS (Foundation) - June 2004 (5 Marks), June 2007 (4 Marks)

**Ans.:** Breach of contract means breaking or non-fulfilment of obligation under a contract. Breach of contract may be:

- (1) **Actual breach of contract:** Actual breach of contract occurs, when at the time when the performance is due, one party fails or refuses to perform his obligation under the contract. *Example:* A agrees to supply 10 bags of rice on 1<sup>st</sup> April. He does not supply the rice bags on that day. This is actual breach of contract. Party not in breach i.e. B can treat the contract as so longer binding on him and sue for breach of contract.
- (2) **Anticipatory breach of contract:** When a party to executory contract declares his intention of not performing the contract, it is known as anticipatory breach of contract.

Executory contract is a contract in which the promises of both the parties have yet to be performed.

Anticipatory breach may take place in any of the following ways :

- (a) **Express repudiation:** When one of the party expressly declares that he is not going to perform his part.

*Example:* A contracts to supply 100 bags of rice on 31.12.2015 to B. On 15.12.2015 he declares that he shows his unwillingness to supply the rice. This is known as anticipatory breach of contract, by express repudiation.

- (b) **Implied repudiation:** Party does some act which is against the performance of his promise.

*Example:* A agrees to sell his car to B on 31.12.2015. On 15.12.2015, A sells his car to C. There is anticipatory breach by implied conduct of A.

**Right of the party not in breach or the aggrieved party in case of anticipatory breach is as follows:**

- ◆ **Rescind the contract:** The aggrieved party may decide not to wait till the due date. It may rescind the contract immediately and claim damages for breach.
- ◆ **Treating the contract as alive:** The aggrieved party may decide not to immediately rescind the contract and wait for the due date of performance. Consequences of treating the contract alive are as follows :

The promisor may perform his promise when the time for its performance comes and the promisee will be bound to accept the performance.

*Example:* On 1.1.2015 A agrees to supply 100 bags of rice to B on 31.1.2015. On 15.1.2015 A shows his unwillingness to B for supply 100 bags. B does not take any action. On 31.1.2015 A supply 100 bags of rice, B is bound to accept it.

If aggrieved party decides not to immediately rescind the contract and wait for the due date of performance and meanwhile if government impose a ban, then contract becomes void and aggrieved party cannot claim damages.

**Question 79] How does a valid contract get discharged by impossibility of performance?**

CS (Executive) – June 2016 (5 Marks)

**Ans.:** Impossibility which arises subsequent to the formation of a contract is called as post-contractual or supervening impossibility.

In England the doctrine of frustration is the parallel concept of “supervening impossibility”.

A contract is discharged by supervening impossibility in the following cases :

- (1) **Accidental destruction of subject matter of contract:** After formation of contract if subject matter is destroyed without any fault of the either party, the contract is discharged.
- (2) **Change in particular state of things.**  
*Example:* Anil promises to marry Madhuri. Before marriage, Madhuri becomes mad. The contract is discharged, as it becomes void due to change in particular state of thing.
- (3) **Serious illness or death or incapacity of party:** Where a contract depends on the personal skill or qualification of a party.  
*Example:* A agreed with B to perform a dance show on a particular date. Before the date of show A was seriously ill. Here contract between A & B is discharged.
- (4) **Change in law or stepping in of a person with statutory authority:**  
*Example:* A agreed to sale certain land to B. Before the sale is effected, the land was compulsorily acquired by the Government. Here, contract is discharged due to Government action.
- (5) **The contract becomes void when war is declared and hence discharged.**

**Question 80] Write a short note on : Impossibility of performance – not an excuse.**

**Ans.:** Impossibility of performance is not an excuse for non-performance. Ordinarily when a person undertakes to do something, he must do it unless its performance becomes absolutely impossible due to any of the circumstances already discussed.

In the following cases, a contract is not discharged on the ground of supervening impossibility:

- (1) **Difficulty of performance:** A contract is not discharged by the mere fact that it has become more difficult of performance due to some un-contemplated events or delays.
- (2) **Commercial impossibility:** A contract is not discharged merely because expectation of higher profits is not realised, 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.
- (3) **Impossibility due to failure of a third person:** Where a contract could not be performed because of the default by a third person on whose work the promisor relied, it is not discharged.
- (4) **Strikes, lock-outs & civil disturbances:** Such events do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract.
- (5) **Failure of one of the objects:** When a contract is entered into for several objects, the failure of one of them does not discharge the contract.

## REMEDIES FOR BREACH OF CONTRACT

**Question 81] State the various remedies available to aggrieved party in case of breach of contract.**  
CS (Foundation) – June 2001 (6 Marks)

**Ans.:** When contract is entered into between two or more parties, it gives rise to rights & obligation. Some time one of the parties to contract may not perform or fails to perform his obligation as per requirement of contract. In that case, party not in breach has means to enforce his rights, which are called as remedies for breach of contract. That's why it said that – *ubi jus ibi remedium* – where there is right, there is remedy. Thus, in case breach of contract parties can enforce their right in a law Court. The appropriate remedy in any case will depend upon the subject matter of contract and the nature of breach.

The remedies available to an aggrieved party on breach of contract are as follows:

- ◆ Rescission of a contract
- ◆ Suit for damages
- ◆ Suit for specific performance
- ◆ Suit for injunction
- ◆ Suit for quantum merit

**Question 82] Write a short note on: Rescission**

**Ans.:** When a party to a contract has broken the contract, the other party may treat the contract rescinded and he is absolved from all his obligations under the contract.

**Example:** A contract to supply 500 pairs of shoes by 1.1.2015 to B. A does not supply the shoes. B can treat the contract rescinded and absolved from liability of payment of price of shoes.

**Question 83] Write a short note on: Damages for breach of contract**

CS (Foundation) – Dec 1998 (5 Marks), June 2005 (5 Marks)

**What do you understand by ordinary damages? When these damages can be claimed?**

CS (Foundation) – June 1999 (5 Marks)

**Write a short note on: Liquidated Damages & Penalty**

CS (Foundation) – Dec 2004 (5 Marks)

**Distinguish between: Ordinary Damages & Special Damages**

CS (Foundation) – Dec 2000 (5 Marks)

**Ans.:** As per **Section 73**, when contract is broken by one party, other party can also claim damages, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote, indirect loss or loss of expected profit by reason of the breach.

The damages, which may be awarded to an injured party, may be of any of the following kinds :

- ◆ Ordinary/natural damages
- ◆ Special damages
- ◆ Exemplary/punitive/vindictive damages
- ◆ Nominal damages
- ◆ Damages for inconvenience & discomfort
- ◆ Liquidated damages/penalty

**Meaning of damages:** Damages means monetary compensation allowed for loss suffered by the aggrieved party due to breach of a contract. The basic purpose of awarding damages is to put the aggrieved party in the same position in which he would have been if other party duly performed contract.

**Ordinary damages:** When one of the party to the contract does not perform his obligation, the aggrieved party can claim damages which naturally and directly arose in usual course of things from such breach. These damages are awarded for such loss suffered by a party, which is direct consequence of breach. These are known as ordinary damages.

Ordinary damages = Difference between (Contract price & market price on the date of breach)

**Damages can be claimed for direct consequence of breach** and not for indirect or remote consequence.

Claim for damages are based in celebrated case of **Hadley Vs Baxendale**.

**Facts of the case:** X's mill was stopped by the breakdown of a shaft. He delivered the shaft to Y, a common carrier, to be taken to a manufacturer to copy it and make a new one. X did not make known to Y that delay would result in loss of profits. By neglect on the part of Y the delivery of the shaft was delayed in transit beyond a reasonable time and the mill was idle for a longer period than otherwise would have been. Held, Y was not liable for loss of profits during the period of delay, as the circumstances communicated to Y did not show that a delay in the delivery of the shaft would entail loss of profits to the mill.

**Special Damages:** When there exists special circumstances and it is brought to the notice of other party and such other party makes breach, then party communicating special circumstances can claim special damages. Thus in order to claim special damages following two conditions must be satisfied:

- There exists special circumstances
- It is brought to the notice of other party & such other party makes breach

*Example:* A sends his special designed car in a show to be held at New Delhi. A engages B, a owner of PQR Transport company to send a car and told B that if the car did not reach the destination on the stipulated date he (A) would suffer a special loss. Car reached at New Delhi after the show is over. A can recover special damages from B.

**Exemplary/vindictive/punitive damages:** These damages are awarded with a view to punish the party in default. Generally, these damages are not awarded by the Courts. However, in following cases, the Court may award such damages, viz.

- Breach of promise to marry
- Wrongful dishonour of a customer's cheque by a banker

In a breach of promise to marry, the amount of the damages will depend upon the extent of injury to party's feeling. In the banker's case, the smaller the amount of the cheque dishonoured larger will be the damages.

**Nominal damages:** These damages consist of small amount e.g. a rupee or even 0.25 paise. These damages are awarded so as to acknowledge to the plaintiff that he has proved & won his case.

**Damages for inconvenience/discomfort etc.:** When a party to a contract has suffered substantial discomfort and inconvenience as a result of breach of contract, he can file a suit for claiming compensation from a party at fault.

**Damages, which are agreed upon in advance:** Sometimes parties to the contract fix the damages that would be payable in case of breach of contract. Such damages, which are agreed upon in advance by the parties may be of following two types.

- (a) **Liquidated damages:** If the specified amount represents **fair & genuine pre-estimate of probable loss**, such specified sum is called as liquidated damages.
- (b) **Penalty:** If the specified sum is **disproportionate to the damages** which are likely to result as a result of breach, such specified sum is called as penalty.

In Indian law, there is no such difference between liquidated damages and penalty. As per **Section 74**, when a contract has been broken, if a sum is named in the contract as the amount be paid in case of such breach, the party complaining of the breach is entitled to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

**Example:** A borrows ₹ 500 from B and promise to pay ₹ 1,000 if he fails to repay on the given date. B is entitled to recover such compensation, as the Court may consider reasonable. However, in no case the total amount including compensation can exceed ₹ 1,000.

**Payment of interest:** Sometimes contract contains a clause providing for payment of interest in case of breach of contract. If such interest is reasonable, Court may allow. However, if interest is in nature of penalty, the Court may award a reasonable compensation only.

**Question 84]** A employs B on a monthly salary of ₹ 5,000 for one year. After Six months, he removes B from the job without his fault. B goes in search of job and meets with an accident. He spends ₹ 20,000 on medicines. Now, he claims damages from A for the breach of contract and also for medical expenses of ₹ 20,000. Will he succeed on both counts? Give reasons?

CS (Foundation) – Dec 1996 (5 Marks)

**Ans.:** As per Section 73, when contract is broken by one party, other party can also claim damages, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss of damage sustained by reason of the breach. Hence, B can claim damages for removal of job and not for medical expenses.

**Question 85]** Rohit agreed to erect a plant for Roshan by 31st December, 2000. Rohit further agreed to pay ₹ 1,000 per month as damages in case of delay beyond the agreed date. Roshan sued Rohit for ₹ 6,000 being the loss caused to him as a result of delay of four months. What damages will you award and why?

CS (Foundation) – June 2001 (5 Marks)

**Ans.:** As per Section 74, when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

In this case also, Roshan can recover a reasonable compensation not exceeding ₹ 4,000.

**Question 86]** Arun is a shopkeeper. He enters into a contract with Bhanu, the wholesaler, for the supply of crackers worth ₹ 1 lakh on the condition that the delivery must be made at least 7 days before Diwali. Arun also makes known to Bhanu that if he fails to deliver the crackers in time, Arun is likely to suffer a loss of profit of ₹ 25,000 which he expected to earn from the sale of crackers during Diwali season. But Bhanu supplies cracker 3 days after Diwali. Now Arun sues Bhanu for the loss of profit. Will Arun succeed? Give reasons.

CS (Foundation) – June 2001 (5 Marks)

**Ans.:** When there exists special circumstances and it is brought to the notice of other party and such other party makes breach, then party communicating special circumstances can claim special damages. Thus, in order to claim special damages following two conditions must be satisfied:

- There exists special circumstances
- It is brought to the notice of other party & such other party makes breach

In this case, Arun makes known to Bhanu about the loss of profit caused by the delayed delivery of crackers. Hence, Arun is entitled to claim special damages.

**Question 87]** Under what circumstances can an aggrieved party institute a suit for 'injunction' and for 'specific performance' of a contract? Explain with examples.

CS (Foundation) – Dec 2006 (5 Marks)

**Ans.:** **Specific performance:** Sometimes monetary compensation may not be adequate remedy, in that case the aggrieved party may pray to Court and get an order against other party to fulfil obligation it has undertaken. This is known as 'Specific Performance'. The law relating to specific relief in India is contained in 'Specific Relief Act, 1963'.

'Specific Relief' means relief in specie, which aims at the exact fulfilment of an obligation. This is also known as 'Equitable Relief'.

**Injunction:** Where a party is in breach of a negative terms of a contract i.e. party is doing something which he promised not to do, the Court may by issuing an order, restrain him from doing what he promised not to do so. Such an order of the Court is known as injunction.

*Example:* W agreed to sing at L's theatre, and during a certain period to sing nowhere else. Afterwards W contracted with Z to sing at another theatre and refused to perform the contract with L. Held, W could be restrained by injunction from signing for Z.

**Question 88]** Anubhav, an author, enters into a contract with Balwant, a publisher, for writing a book for him. But, subsequently Anubhav refuses to write the book for Balwant. Now, Balwant files a suit against Anubhav for specific performance of the contract. Will Balwant succeed? Give reasons.

CS (Foundation) - Dec 2007 (5 Marks)

**Ans.:** Court does not grant specific performance of the contract where the contract is of personal nature or personal services. In the given case, contract involves the personal qualification of Anubhav. Hence, Balwant will not get order of specific performance against Anubhav.

**Question 89]** Explain in brief the doctrine of quantum meruit.

CS (Foundation) - Dec 2003 (5 Marks)

Explain the concept of quantum meruit.

CS (Foundation) - June 2008 (5 Marks), Dec 2009 (5 Marks)

CS (Foundation) - June 2010 (5 Marks)

**Ans.:** *Quantum meruit* literally means 'as much earned' i.e. in proportion to the extent of work done. Sometime contract cannot be completed; in that case if one party has already executed some work, then he is entitled to get a proportional amount to extent of work done. In case of breach of contract aggrieved party can claim 'Quantum Meruit' plus damages. Quantum meruit is available only if original contract has discharged.

In following cases, a claim for quantum meruit may arise.

(1) **When an agreement is discovered to be void/when a contract becomes void:**

*Example:* K hired a godown from L for 12 months and paid the rent in advance. After about 7 months the godown was destroyed by fire without the fault of either party. Here, contract has become void due to destruction of godown and hence K can recover rent for unexpired period from L.

(2) **No agreement as to remuneration:** In a contract to render services, if there is no express or implied intention to provide remuneration, the party rendering services can sue upon quantum meruit for reasonable remuneration.

(3) **When one party prevents the other from completion of contract.**

In following cases, even *party at fault* can claim payment on quantum meruit.

(a) **Divisible contracts partly performed:** Generally, no remedy is available to defaulting party, but even defaulting party may be entitled to get payment on quantum meruit, if following conditions are satisfied :

- The contract is divisible.
- The contract is partly performed.
- The party not in default has enjoyed the benefit of the part of the performances.

If above conditions are satisfied, a defaulting party may be entitled to get proportionate amount after deducting compensation for loss/damage.

(b) **Indivisible contract performed completely but badly:** In such case party who has performed the contract can claim the lump sum, but other party can make deduction for bad work.

*Example:* A agrees to repair the swimming pool of B for ₹ 50,000. The payment is to be made by B on the completion of repair of swimming pool. A carried the repair in defective way. A can recover ₹ 50,000 less a deduction for bad work.

## QUASI CONTRACTS

**Question 90] Write a short note on: Quasi contracts**

**CS (Foundation) – June 2000 (5 Marks)**

**Ans.:** Quasi contracts are obligation created by law, regardless of agreement. Law of quasi contracts is also known as law of restitution. Basically quasi contracts are not contracts at all, they are obligations imposed under the law.

In a contract, a promisor voluntarily undertakes an obligation in favour of the promisee. When a similar obligation is imposed by law upon a person for the benefit of another even in the absence of a contract, such contracts are the quasi-contracts.

These are based upon principles of equity, justice and good conscience.

**Types of quasi-contracts:**

- (1) Supply of necessities to persons incapable of contracting. [Section 68]
- (2) Right to recover money paid for another person. [Section 69]
- (3) Obligation of a person enjoying benefits of non-gratuitous act. [Section 70]
- (4) Responsibility of a finder of goods. [Section 71]

**Question 91] Enlist quasi-contracts dealt with under the Indian Contract Act, 1872.**

**CS (Foundation) – Dec 2008 (5 Marks)**

**The position of finder of lost goods is that of bailee.**

**CS (Executive) – June 2014 (5 Marks)**

**Ans.:**

- (1) **Supply of necessities to persons incapable of contracting [Section 68]:** If necessities are supplied to persons incapable of contracting (minor or a person of unsound mind) then person supplying such necessities is entitled to be reimburse from the property of such incapable person. Same is the case if money has been advanced for the purchase of necessities.

*Example:* A supplies B, a minor, necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

- (2) **Reimbursement of person paying money due by another, in payment of which he is interested [Section 69]:** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

*Example:* A purchase certain mills. There were overdue taxes on property by earlier owner. A paid taxes to save the mills from being sold in execution. It was held that A had interest in the payments to safeguard his interest. Hence, he can recover the amount from earlier owner.

- (3) **Obligation of a person enjoying benefits of non-gratuitous act [Section 70]:** Where, a person does some act or delivers something lawfully to another person with the intention of receiving payments for the same, in such a case, the other person is bound to make payment if he accepts such services or goods or enjoys their benefit.

*Example:* A, a tradesman, leaves the goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods.

- (4) **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 a bailee. He is bound to take care of such goods as man of ordinary prudence. He is treated as owner against whole world except true owner.

*Example:* A finds diamond on B's shop. He hands it to B to keep until true owner is found. True owner did not appear even advertisement in news paper. A claims the diamond from B, who

refuses to return. B is bound to return diamond to A as A is owner against whole world except true owner.

**Responsibility of finder of goods:**

- ◆ He must take care of goods as man of ordinary prudence.
- ◆ He must not to appropriate goods for his own use.
- ◆ He must not mix the goods with his own goods.
- ◆ He must try to find out true owner and to restore goods to the owner when the owner is traced.

**Rights of finder of goods:**

- (a) **Right of lien:** Finder of goods has a right to retain the goods until he receives compensation for trouble and expenses incurred in preserving the goods and finding out the owner.
  - (b) **Right to sue for reward:** Finder of goods can sue the owner for payment of any specific reward offered by the owner for the return of goods lost, and retain the goods till payment of such reward.
  - (c) **Right of sale:** Finder of goods can sell the goods found, if:
    - ◆ Owner cannot be found with reasonable diligence
    - ◆ Owner, if found, does not pay the lawful charges of the finder
    - ◆ Goods are in danger of perishing
    - ◆ The lawful charges of finder, amount to  $\frac{2}{3}$ rd of the value of goods.
- (5) **Liability for money paid or thing delivered by mistake or under coercion [Section 72]:** A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it.
- Example:* A pays the money to B by mistake. It is really due to C. B must refund the money to A. C however cannot recover the amount from B as there is no privity of contract.

**Question 92] Ravi found a purse in a computer education centre. He deposited the purse with proprietor of the centre so that the real owner can claim. However, no one claimed the purse. Ravi wants the purse back. Can he succeed? CS (Foundation) - Dec 2002 (5 Marks)**

**Ans.:** A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. He is bound to take care of such goods as man of ordinary prudence. He is treated as owner against whole world except true owner.

In the given case, it is the duty of the Computer Education Center to return the purse to Ravi as in absence of real owner he will be treated as owner.

**Question 93] Ajay finds a mobile phone lying on a table in a Coffee House. He hands over the mobile phone to Bijay, the manager of the Coffee House, so that the true owner can claim it back. However, no one claims the mobile phone. After sometime, Ajay goes to Bijay, the manager, and requests him to return the mobile phone to him. On Bijay's refusal, Ajay files a suit against him for recovery of the mobile phone. Will Ajay succeed? Give reasons.**

**CS (Foundation) - June 1996 (5 Marks), June 2008 (5 Marks)**

**Ans.:** A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. He is bound to take care of such goods as man of ordinary prudence. He is treated as owner against whole world except true owner.

In the given case, Ajay can recover the mobile phone from Bijay because in absence of real owner Ajay will be treated as owner.

## INDEMNITY & GUARANTEE

### Question 94] Write a short note on: Contract of indemnity

**Ans.: Contract of indemnity [Section 124]:** A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any other person is called a contract of indemnity. It is contingent contract.

The person who promises to make the good loss is called as **indemnifier**.

The person whose loss is to be made good is called as **indemnified** or **indemnity holder**.

*Example:* A contracts to indemnify B against the consequence of any proceedings which C may take against B in respect of a certain sum of ₹ 10,000. This is a contract of indemnity.

*Example:* A & B goes into shop. B says to the shopkeeper, "Let A have goods, I will see you paid." This is a contract of indemnity.

*Example:* A lost his share certificate. He applies to company for issue of duplicate share certificate. Company asks A to give an indemnity bond assuring to reimburse possible loss that may arise on account of issue of duplicate share certificate. There is contract of indemnity between Company & A.

### Question 95] Write a short note on: Rights of the indemnity-holder when sued

**Ans.: Right of indemnity-holder when sued [Section 125]:** Indemnity-holder acting within scope of his authority is entitled to recover:

- (1) All damages which he may be compelled to pay in any suit in respect of any matter to which he promise to indemnify applies.
- (2) All cost for defending or bringing any suit if worked as a prudent person.
- (3) All sums which he may have paid under the terms of any compromise of any such suit.

### Question 96] A contract of guarantee is tripartite agreement. Comment.

**Ans.: "Contract of guarantee", "surety", "principal debtor" & "creditor" [Section 126]:** A contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default.

The person on whose behalf guarantee is given is called as **principal debtor**. (P)

The person who gives guarantee is called as **surety**. (S)

The person to whom guarantee is given is called as **creditor**. (C)

*Example:* C sold goods on credit to P, S promises to pay amount if P make default. This is contract of guarantee.

Contract of guarantee must have all the essential elements of valid contract. Consideration received by principal debtor is sufficient for surety and it not necessary to have any benefit or consideration to surety.

### Question 97] What are the contracts of uberrimae fidei? Give any four examples.

CS (Foundation) – June 2003 (5 Marks), Dec 2004 (5 Marks)

**Ans.: Uberrimae fidei** means 'utmost good faith'/'disclosure of all material facts'.

The creditor is under obligation to disclose all the material facts in respect of creditworthiness of principal debtor to surety even if surety does not specifically ask.

*Example:* C engaged P as a clerk to collect money. P misappropriated some of C's receipt. This sum was made good by P's relation and C agreed to retain P in his employment on fidelity guarantee. S gave his guarantee for P's duly accounting. C did not inform S with P's previous dishonesty. Guarantee could not be enforced against S owing to non disclosure of P's previous dishonesty.

**Contracts *Uberrimae fidei*:** There are contracts which require the utmost good faith. There is a special duty to disclose all the material facts and the failure to disclose such information give a right to rescind the contract at the option of the other party. The following contracts are contracts *uberrimae fidei*:

- (a) **Contracts of insurance of all kinds:** It is the duty of the assured person to disclose all the material information or fact to the insurance company, affecting the risk covered. A concealment of a material fact will render the contract void.
- (b) **Company prospectus:** It is the duty on the part of every company to disclose each and every material information in the prospectus. When it invites public to subscribe for its shares in or debentures of. The contract to buy shares or debentures is voidable at the option of purchaser where there is a false statement or non-disclosure in the prospectus.
- (c) **Contracts of family arrangements:** It is the duty of every member of the family to make full disclosure of every material fact within his knowledge. Such a contract is not binding if either party has been misled by any concealment of material facts.
- (d) **Contract for sale of land:** It is the duty of vendor to show good title to the land that he has contracted to sell to the purchaser.

**Question 98] Distinguish between: Contract of indemnity & Contract of guarantee**

**Ans.:** Following are the main points of distinction between Contract of indemnity & Contract of guarantee:

Points	Contract of Indemnity	Contract of Guarantee
<b>Meaning</b>	A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any other person is called a contract of indemnity. It is contingent contract.	A contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default.
<b>Parties</b>	There are two parties to the contract of indemnity viz. - Indemnifier - Indemnity holder	There are three parties to the contract of guarantee viz. - Principal debtor, - Surety, - Creditor
<b>No. of contracts</b>	There is only one contract in case of indemnity.	There are three contracts in contract of guarantee.
<b>Liability</b>	The liability of indemnifier is primary and independent.	The liability of surety is collateral or secondary. Primary liability is that of principal debtor.
<b>Nature of liability</b>	The promise of the indemnifier is to save the person indemnifier from a contingent risk.	The surety undertakes to discharge the liability of the principal debtor, which is not contingent, but is subsisting.
<b>Example</b>	A and B go into a shop. A says to the shopkeeper, "Let B have the goods, I will see you paid."	A and B go into a shop. A says to the shopkeeper, "Let B have the goods and if he does not pay, I will."

**Question 99] Write a short note on: Specific guarantee**

**Ans.:** When guarantee extends to a **single transaction** it is known as specific or simple guarantee. It comes to an end when the guaranteed debt is duly discharged or the promise is duly performed. A specific guarantee is **irrevocable**.

**Question 100] Write a short note on: Continuing guarantee**

**Ans.:** **Continuing guarantee [Section 129]:** When a guarantee extends to a series of transaction it is called as a continuing guarantee. The liability of the surety in case of a continuing guarantee extends to all the transaction until the revocation of the guarantee.

**Example:** C employs P for collecting rent of C's Zamindari. S gives guarantee for good work and honesty of P. This is continuing guarantee.

*Example:* S guarantees payment to C for ₹ 10,000 for any goods C may supply to P from time to time. This is continuing guarantee.

**Revocation of a continuing guarantee:** A continuing guarantee cannot be revoked for transaction which has already taken place.

*Example:* X guarantees repayment of advance made to A within 6 months subject to a maximum of ₹ 20,000. If ₹ 10,000 has been advanced by the end of 2 months, guarantee is irrevocable insofar as this advance of ₹ 10,000 is concerned. However, guarantee for balance of ₹ 10,000 may be revoked.

**Method of revoking continuing guarantee:**

- (1) **Express revocation [Section 130]:** A continuing guarantee may be revoked by the surety at any time, as to future transactions, by notice to the creditor.
- (2) **Death of surety [Section 131]:** The death of the surety operates, in the absence of a contract to the contrary, as a revocation of a continuing guarantee, as regards future transactions.
- (3) **Material alteration:** If the contract between the creditor and the principal debtor is materially altered without the consent of the surety, the contract of guarantee is revoked.
- (4) **Impairment of surety's remedy:** If any act of the creditor impairs the remedy available to the Surety against the principal debtor, it amounts to revocation of guarantee.
- (5) **Novation:** When any new contract is substituted for an existing contract either between the same parties or between different parties, it amounts to revocation of existing guarantee.
- (6) **Arrangement between principal debtor and creditor:** If there is any arrangement between the principal debtor and creditor, under which the creditor makes a composition of the debt, or gives time for repayment of the debt or promises not to sue him, the continuing guarantee terminates.
- (7) **Loss of security:** If the creditor loses or parts with any security belonging to the Principal Debtor, without the consent of surety, then the surety is discharged from liability to the extent of the value of the security.

**Question 101] The liability of a surety is co-extensive with that of the principal debtor. Explain this principle.**

**Ans.: Surety's Liability [Section 128]:** Unless otherwise provided by the contract, the liability of surety is co-extensive with that of the principal debtor. The surety's liability is secondary or contingent, since it arises only on the default of principal debtor.

When the principal debtor defaults, the surety's liability begins and runs co-extensive with liability of principal debtor, i.e. the surety will be liable for all those sums for which the principal debtor is liable.

*Example:* S guarantees to C, the payment of a bill of exchange by P who is the acceptor. P dishonours the bill, S is liable for the amount of the bill and also for interest or other charges that has become due on it, i.e. what would have been payable by P shall be payable by S.

**Question 102] Amar guarantees to Bimal the payment of a bill of exchange by Chirag, the acceptor. The bill is dishonoured by Chirag. What is the extent of liability of Amar?**

CS (Foundation) – June 2003 (5 Marks), Dec 2009 (5 Marks)

**Ans.:** As per Section 128, the liability of a surety is co-extensive with that of the principal debtor. Hence, Amar is liable to pay amount of bill as well as noting charges and interest.

**Question 103] Write a short note on: Rights of surety against principal debtor**

**Ans.:** Surety has following rights against principal debtor:

- (1) **Right to be indemnified [Section 145]:** There is an implied promise to indemnify the surety by the principal debtor. The surety is entitled to recover from the principal debtor, all such sums he has rightfully paid to the creditor, under the contract.

- (2) **Right to be relieved of liability:** Before payment, the surety can compel the principal debtor to relieve him from liability by paying off the ascertained debt.

**Question 104] Write a short note on: Rights of surety against creditor**

**Ans.:** Surety has following rights against creditor:

- (1) **Revocation of continuing guarantee [Section 130]:** Surety may revoke at any time, a continuing guarantee as to future transactions, by giving a notice to the creditor.
- (2) **Subrogation of creditors rights [Section 140]:** On payment of a guaranteed debt surety is subrogated all the rights of creditor. This means on payment of guaranteed debt surety steps into shoes of creditors.
- (3) **Security from creditor [Section 141]:** Surety is entitled to the benefit of every security which the creditor has against the principal debtor, irrespective of whether he knows the existence of such security or not.
- (4) **Suit against principal debtor:** After the debt has become due, but before paying, surety may require the creditor to sue the principal debtor. In such case, the surety shall reimburse the expenses of the creditor.
- (5) **Right or set off:** On being sued by the creditor, the surety can rely on any set-off or counter claim which the debtor has against the creditor.
- (6) **Right to equities:** On payment of debt the surety is entitled to all equities which the Creditor could have enforced against principal debtor and all persons claiming through him.
- (7) **In case of fidelity guarantee:** Surety can call up the creditor or the employer to dismiss the employee whose honesty was guaranteed, in case of proven dishonesty of such person.

**Question 105] Write a short note on: Rights of surety against other co-sureties**

**Ans.:** Surety has following rights against other co-sureties:

- (1) **Right to demand equal contribution [Section 146]:** In the absence of any contract to the contrary, each surety is liable, and can demand from his co-sureties, equal contribution, for the discharge of whole debt or part of debt that remains unpaid by the debtor.
- (2) **Right to contribute only agreed sums [Section 147]:** Co-sureties bound in different sums shall pay equally up to the limits of their respective obligations.

**Question 106] Write a short note on: Discharge of surety**

**Ans.:** A surety is said to be discharged when his liability comes to an end. The various modes of his discharge as below:

- Revocation
- Invalidation of contract
- Conduct of creditor.

**Question 107] Guarantee obtained by concealment of material fact is invalid.**

**Ans.:**

- (1) **Misrepresentation [Section 142]:** Guarantee obtained by misrepresentation made by creditor relating to a material part of the transaction is **invalid**.
- (2) **Concealment [Section 143]:** Guarantee obtained by creditor by means of silence as to some material circumstances as to contract is **invalid**.

- (3) **Failure of co-surety to join a surety [Section 144]:** When a contract of guarantee provides that a Creditor shall not act on it until another person has joined in it as a co-surety, the guarantee is not valid of that other person does not join.
- (4) **Failure of consideration:** Where there is no consideration between the principal debtor and creditor, the surety is discharged.

**Question 108] Write short notes on: Discharge of surety by conduct of creditor**

**Release by creditor of one of co-surety, discharge the other sureties. Comment.**

**Ans.:**

- (1) **By variance in terms of contract [Section 133]:** Any variance made in the terms of contract between principal debtor and creditor, without the surety's consent, discharges the surety as to transaction subsequent to variance.

*Example:* A becomes surety to C for B's conduct as a Manager in C's Bank Afterwards B and C contract without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his surety ship by the variance made without his consent, and is not liable to make good this loss.

- (2) **Release or discharge of principal debtor [Section 134]:** Surety is discharged by any contract between creditor and principal debtor, by which principal debtor is released, or by any act or omission of creditor, legal consequence of which is discharge of principal debtor.

*Example:* A contracts with B for a fixed price to build a house for A within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B fails to supply timber. C is discharged from his surety ship.

- (3) **Compounding with principal debtor [Section 135]:** Surety is discharge by any contract between creditor and principal debtor by way of which:

- Creditor makes a **composition** with principal debtor, or
- Creditor agrees to **give time** to principal debtor, or
- Creditor agrees **not to sue** the principal debtor

But where the surety assents to such contract, he is not discharged.

*Example:* C, the holders of a overdue Bill of Exchange drawn by A as surety for B, and accepted by B, contracts with X, to give time to B. In such case, A is discharged from the surety ship liability.

- (4) **Impairment of surety's eventual remedy [Section 139]:** Surety is discharge, when the creditor does any act which is inconsistent with the right of surety, or omits to do any act which his duty to the Surety requires him to do, and the eventual remedy of the Surety against principal debtor is thereby impaired.

*Example:* D takes J as apprentice on a fidelity guarantee given by C. D also promises that he will, at least once a month, see that J make up the cash. D omits to do this and J embezzles. C is not liable on his guarantee.

- (5) **Loss of security [Section 141]:** The surety is discharge, when the creditor loses a security, or without Surety's consent, parts with a security. The Surety is discharge only to the extent of the value of the lost or parted security.

*Example:* C, whose advance to B is secured by a decree, receives a guarantee for that advance from A, C later takes B's goods in execution under the Decree, and then without A's knowledge, withdraws the execution A is discharged.

However surety is not discharged in following circumstances :

- (a) **Agreement with third party to grant time to principal debtor [Section 136]:** When the creditor makes an agreement with a third person to grant time to principal debtor, the surety is not discharged.

*Example:* F, holding an overdue bill drawn by A as surety for B, and accepted by B, contracts with Z to grant time to B for its payment. A is not discharged.

- (b) **Creditor's forbearance to sue [Section 137]:** Mere forbearance on the part of creditor to sue principal debtor or to enforce any remedy against him does not discharge the surety.

*Example:* Z owes to Y a debt guaranteed by X. Debt becomes payable. Y does not sue for a year after it has become payable. X is not discharged.

- (c) **Release of one co-surety [Section 138]:** When there are co-sureties, release of one of them by creditor does not discharge the other sureties. Also, it does not free the surety so released from his responsibility towards other co-sureties.

## BAILMENT & PLEDGE

### Question 109] Define 'bailment' as per Indian Contract Act, 1872

**Ans.: "Bailment", "bailor" & "bailee" defined [Section 148]:** Bailment is the delivery of goods, by one person to another, for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of, according to the instructions of the person delivering them.

**Bailor** is the person delivering the goods.

**Bailee** is the person to whom the goods are delivered.

When a person, already in possession of goods belonging to another, contracts to hold them as bailee, he becomes the Bailee and the owner becomes Bailor, even though the goods may not have been delivered by way of bailment.

### Question 110] What are the essentials of bailment?

**Ans.:** Following are the essentials of bailment:

- (1) **Contract:** Bailment may be express or implied.
- (2) **Delivery of the goods:** Bailment involves delivery of possession of goods by bailor to bailee.
- (3) **Possession:** Only possession in goods (and not ownership) is transferred.
- (4) **Modes of delivery [Section 149]:** Delivery may be actual or constructive. Actual delivery is made by physically handing over the goods. Constructive or symbolic delivery means doing something which has the effect of giving delivery. e.g. delivery of railway receipt, handing over the key of car etc.
- (5) **Purpose:** The delivery of goods must be for a certain purpose.
- (6) **Return of goods:** The goods must be returned after the purpose is accomplished.
- (7) **Consideration:** The consideration is generally in the form of money payment either by the bailor or bailee. The detriment suffered by the bailor, in parting with possession of the goods, is a sufficient consideration to support the contract of bailment.

### Question 111] Distinguish between: Gratuitous Bailment & Non-gratuitous Bailment

CS (Foundation) - Dec 2001 (5 Marks), Dec 2003 (5 Marks)

**Ans.:** Bailment may be classified into following types:

- (1) **Gratuitous Bailment:** If no consideration passes from bailor to bailee, e.g. A gives book to B for exam.

- (2) **Non-gratuitous Bailment:** It is bailment for consideration, e.g. A gives some goods to B, a transporter, to deliver goods at Mumbai at specified address.

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**Question 112] What are the duties of the bailor?**

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**Ans.:** Duties of bailor are as follows:

(1) **To disclose faults in goods [Section 150]:**

- **In case of gratuitous bailment:** Bailor is bound to disclose known faults to bailee. If do not disclose then he may liable to bailee for damages from such non-disclosure.
- **In case of non-gratuitous bailment:** Bailor is liable for damages whether or not he was aware of the existence of faults.

(2) **To bear expenses:**

- **In case of gratuitous bailment:** Bailor shall repay all necessary expenses incurred by bailee for the purpose of bailment.
- **In case of non-gratuitous bailment:** Bailor is liable only extraordinary expenses, and not the ordinary expenses.

(3) **Indemnify bailee for loss in case of premature termination of gratuitous bailment [Section 159]:** Bailor has the right to terminate the gratuitous bailment even it is for particular period. In such a case, Bailor has to indemnify the bailee the excess of loss over benefit.

(4) **Indemnify bailee for loss when bailor's title is defective [Section 164]:** Bailor is responsible to the Bailee for any loss which the Bailee may sustain by reason that the Bailor was not entitled to make bailment.

*Example:* A lends an old discarded motor cycle to B gratuitously for 3 months. B incurs ₹ 500 on its repairs. If A asks for the return of the motor cycle after 1 month, he will have to compensate B for expenses incurred by B in excess of the benefit derived by him.

(5) **Receipt of goods back on termination of bailment:** When bailee returns the goods in accordance with the terms, the bailor should receive them. If the bailor refuses to accept goods tendered by bailee, he shall compensate the bailee for all necessary and incidental expenses incurred by him in keeping the things in good condition.

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**Question 113] A hires a carriage of B. The carriage is unsafe though B does not know this. A is injured. Is B liable to A for the injury?**

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CS (Foundation) - Dec 2000 (4 Marks)

**Ans.:** Hiring of a carriage is non-gratuitous bailment. In case of non-gratuitous bailment, bailor is liable for damages whether or not he was aware of the existence of faults. Hence, B is liable to A.

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**Question 114] What are the duties of bailee?**

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**Ans.:** Duties of bailee are as follows:

- (1) **To take care of goods [Sections 151 & 152]:** The bailee is bound to take care of the goods bailed to him as a man of ordinary prudence. If bailee takes care of goods bailed as man of ordinary prudence then he will not be liable if there is loss to goods.
- (2) **Not to make unauthorized use of goods [Section 153]:** Bailee shall act in conformity with the terms of contract of bailment. Where he does any act with regard to the goods bailed, inconsistent with the terms, the contract becomes voidable at the option of bailor. The bailee cannot set up an adverse title against the bailor.
- (3) **Compensation for damage to goods [Section 154]:** Bailee shall use the goods according to terms and conditions of bailment. Where he does not use so and as a result, the goods suffer damage, he shall duly compensate the bailor.

- (a) **Not to mix goods bailed with his own goods:**
- (b) **With bailor's consent [Section 155]:** Where the bailee, mixes the goods bailed with his own goods, with the bailor's consent, both of them shall have interest in proportion to their shares in the mixture produced.
- (c) **Without bailor's consent:** If the goods in the mixture :
- **Can be separated [Section 156]:** Property in the goods remains with the respective parties. Bailee bound to bear the expenses of separation or division, and also of any damage arising from the mixture.
  - **Cannot be separated [Section 157]:** Bailee shall compensate the bailor for the loss of his goods.
- (4) **Return of the goods bailed [Section 160]:** Bailee shall, without demand, return the goods bailed to the bailor, or deliver it according to his instructions. Such delivery shall be made as soon as the time for which they were bailed expires, or the purpose for which it had been bailed is accomplished.
- (5) **Compensation for failure to return [Section 161]:** Where by the fault of the bailee, goods are not returned at the proper time and place. Bailee shall compensate bailor for any loss, destruction or deterioration of such goods from that time.
- (6) **To return any accretion to goods [Section 163]:** If there is any profit or increase from goods bailed shall be delivered by the bailee to the bailor.
- Example:** A gives a cow to B. Cow has calf. B should deliver cow as well as calf.
- (7) **Delivery of goods to joint bailors [Section 165]:** When goods are owned and bailed by joint owners, and in the absence of contract to the contrary, the bailee shall deliver them back to one of joint owners, or according to the directions of one joint owners without the consent of all.

**Question 115] A lends his car to B for a drive by him only. B allows C, an expert driver, to drive the car. C drives the car carefully but hits with an electronic pole. The car is damaged. A file suit against B claiming damages. Will he succeed? Give reasons.**

**CS (Foundation) - June 1999 (5 Marks)**

**Ans.:** As per **Section 154**, a bailee is responsible under the contract of bailment not to make an unauthorized use of the goods bailed. If a bailee uses goods for an unauthorized purpose then he is liable to compensate the bailor for any loss which may arise from such unauthorized use.

In given case car is given to B for a drive by him only. If B allows any other person it will be unauthorized use of bailed goods even if such other person is expert driver. Thus, B is liable for the damage to A's car.

**Question 116] Write a short note on: Right of lien of bailee**

**Ans.:** Lien means to withhold the property of another until lawful charges are paid.

**Example:** A client delivers books of account to CA to prepare income tax return. CA can withhold the books of account until his charges are paid.

Bailee has a right to retain the goods when his lawful charges are not paid for. Two types of lien are:

- Particular lien [Section 170]
- General lien [Section 171]

**Question 117] Distinguish between: General lien & particular lien**

**CS (Foundation) - Dec 1999 (4 Marks)**

**Ans.:** Following are the main points of distinction between general & particular lien:

Points	General Lien	Particular Lien
<b>Meaning</b>	It is a right to retain all the goods or any property of another until all the claims of holder are satisfied. This is a right to retain the property of another for a general balance of accounts.	It is a right to retain those goods in respect of which bailee has rendered some service involving the exercise of labour or skill.
<b>Persons entitled</b>	Right of general lien can be exercised by bankers, factor, wharfingers, attorneys of High Court and policy brokers.	Right of particular lien can be exercised by any bailee who has rendered some service by exercise of his skill and labour in respect of the goods bailed.
<b>Condition</b>	Bailee is unpaid and Bailee need not have worked upon the goods bailed.	Bailee has worked upon the goods and remuneration remains unpaid.

**Question 118] Define: 'Pledge' as per Indian Contract Act, 1872**

**Ans.:** Pledge is a bailment of goods as security for payment of a debt or performance of a promise. A pledge is bailment for security. It is special kind of bailment.

Person who pledge the goods is known as **pledger/pawnor**.

Person to whom goods are pledged is known as **pledgee/pawnee**.

**Question 119] Distinguish between: Bailment and Pledge CS (Foundation) - June 2002 (5 Marks)**

**Ans.:** Following are main points of distinction between bailment and pledge:

Points	Bailment	Pledge
<b>Meaning</b>	Bailment is the delivery of goods, by one person to another, for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of, according to the instructions of the person delivering them.	Pledge is a bailment of goods as security for payment of a debt or performance of a promise. A pledge is bailment for security.
<b>Purpose</b>	Bailment may be for following purposes : - Providing security for a loan or - Fulfilment of an obligation. - Delivering goods for repairs, safe custody, etc.	If pledge is bailment of goods for a specific purpose, i.e. to provide a security for a loan or fulfilment of an obligation.
<b>Sale of goods</b>	There is no right of sale to the bailee. Bailee may either: - Retain goods, or - Sue the bailor for non-payment of his dues.	Pledgee has a right of sale of goods pledged on default of pledger by giving a notice.
<b>Use of goods</b>	Bailee can use the goods bailed as per terms of contract.	Pledgee has no right of using goods pledged.

**Question 120] What are the rights of a pawnee/pledgee?**

**Ans.:** Following are the rights of pawnee/pledgee :

**(1) Right of retainer [Section 173]:** Pawnee may retain the goods pledged for :

- Payment of the debt or the performance of promise,
- Interest due on the debt, and
- All necessary expenses incurred by him with respect to possession or for preservation of goods pledged.

**(2) Retainer for subsequent advances [Section 174]:**

- Where the pawnee lends money to the pawnor subsequently, after the date of pledge, it shall be presumed that he has a right of retainer over the goods already pledged in respect of the subsequent lending also.
- This presumption can be made invalid only by an express provision to that effect.

- (3) **Reimbursement of extraordinary expenses [Section 175]:** Where the pawnee incurs extraordinary expenses to preserve the goods pledged with him, he is entitled to receive such amount from the pawnor.
- (4) **Suit:** Pawnee may institute a suit against pawnor when there is a default in payment of debt or performance of promise at the stipulated time.
- (5) **Retention/sale of goods:** Pawnee may retain the goods pledged as collateral security, or sell the goods pledged by giving a reasonable notice to the pawnor.
- (6) **Surplus/deficit on sale:** When there is a surplus on sale, pawnee shall pay the excess to the pawnor. In case of deficit, pawnor shall be liable for the balance amount.
- (7) **No notice:** Where the pawnee does not give a reasonable notice to the pawnor, the sale is valid, but pawnee is liable to pay damages to pawnor.
- (8) **Right against true owner of goods [Section 178A]:**
  - (a) Where the pawnor has acquired possession of pledged goods, under a voidable contract, but contract has not been rescinded at the time of pledge, the pawnee acquires a good title to the goods, against the true owner.
  - (b) The title of pawnee is good only where he had no notice of the pawnor's defect in title and he acts in good faith.

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**Question 121] What are the rights of a pawnor?**

**Ans.:** Following are the rights of pawnor/pledger.

- (1) **To get back goods:** Pawnor is entitled to get back the goods pledged by payment of the sum of money, or performance of the promise.
- (2) **To redeem goods before sale [Section 177]:** When the pawnor makes a default in the payment of debt or performance of promise, he still has a right to redeem the goods pledged at any subsequent time before the Pawnee sells them. But, he has to pay such additional expenses to the pawnee that arose due to his default.
- (3) **Right to notice of Sale:** In case of default by the pawnor, and the pawnee intends to sell the goods pledged, a reasonable notice shall be given to the pawnor, so as – (a) to enable him to pay off the debt and take back the goods, or (b) to oversee the sale so that the goods fetch the proper price.
- (4) **Goods in proper condition:** Pawnor has a right to see that the pawnee takes proper care of goods pledged and properly maintains them.

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**Question 122] "Goods can be pledged by the owner only." Discuss. State the circumstances in which the goods can be pledged by non-owners.**

CS (Foundation) – Dec 2006 (5 Marks)

**Ans.:** The general rule is that only owner can create valid pledge. However, in following situation even non-owner can create a valid pledge:

- (1) **Pledge by mercantile agent [Section 178]:**
  - A mercantile agent who is in possession of goods or of document of title to goods, with the consent of owner, can pledge them while acting in the ordinary course of business as a mercantile agent.
  - The pledge shall be valid only if the pawnee acts in good faith, and has no notice at the time of pledge that the pawnor had no authority to pledge.
- (2) **Pledge by person in possession under voidable contract [Section 178A]:** When the pawnor has obtained possession of goods under a voidable contract by way of fraud, coercion but the contract

is not rescinded at the time of pledge, it is valid pledge. The pawnee obtains a good title to such goods provided that he acts in good faith and had no notice of the defective title of the pawnor.

- (3) **Pledge where pawnor has limited interest [Section 179]:** Where the pawnor has only limited interest in the goods pledge shall be valid only to the extent of such interest.
- (4) **Pledge by seller or buyer in possession after sale:** A seller in possession of goods **after sale** and a buyer in possession of goods **before sale**, can create a valid pledge provided the pawnee acts in good faith and has no notice of prior sale.

*Example:* A sells 10 bags of sugar to B on a stipulation that delivery and payment to be made in next month. Before goods are delivered to B, A pledges goods with C, who acts in good faith and has no notice of prior sale. The pledge is valid.

- (5) **Pledge by co-owner in possession:** If co-owner is in possession of goods with the consent of other co-owner then co-owner in possession can create a valid pledge.

**Question 123]** Ajay found a defective video camera lying in a park. He pledged it with Vijay for ₹ 3,000. Mohan, the real owner, came to know about it. Mohan sued Vijay to recover his camera. Vijay had incurred ₹ 500 on repair to make the camera operational. Can Mohan recover his camera?

CS (Foundation) - June 2007 (5 Marks)

**Ans.:** Mohan can recover his camera but only paying ₹ 500 to Vijay. As per **Section 179**, where the pawnor has only limited interest in the goods, pledge shall be valid only to the extent of such interest.

## LAW OF AGENCY

**Question 124]** What do you understand by contract of agency?

**Ans.:** It is the relationship between two persons where one person is employed (known as agent) by another (known as principal) to act on behalf of that another with the third person.

**'Agent' & 'Principal' defined [Section 182]:** An agent is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the principal.

**Who may employ agent [Section 183]:** Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

**Who may be an agent [Section 184]:** Any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent.

No consideration is necessary to create an agency. **[Section 185]**

The authority of an agent may be expressed or implied. **[Section 186]**

**Question 125]** Distinguish between: Agent & Servant

**Ans.:** Following are main points of distinction between agent and servant:

Points	Agent	Servant
Power to bind parties	Agent has authority to create contractual relationship between his principal and a third party	Servant has no authority to bind his master.
No. of Principals/ masters	One person may act as agent for several principals at the same time.	Servant usually serves only on master
Remuneration	Agent is remunerated by way of commission.	Servant is paid salary or wages as remuneration
Scope	Scope of agent is limited; he cannot act as a servant.	Scope servant is wider; he can serve as an agent also.

**Question 126] Briefly explain the various modes by which an agency may be created.**

**Write a short note on: Agency by holding out**

**CS (Foundation) – June 1999 (5 Marks)**

**Write a short note on: Agency by estoppel**

**CS (Foundation) – June 2001 (5 Marks)**

**Ans.:** Agency may be created by any of the modes:

- (1) **Express Agreement [Section 187]:** An authority is express when it is given by words, spoken or written. The usual form of a written contract of agency is power of attorney on a stamped paper.

*Example:* A residing in Satara, has a house in Pune. He appoints B in Pune, by a power of attorney, as a caretaker of his house.

- (2) **Implied Agreement [Section 187]:** An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written, or the ordinary course of dealings.

*Example:* A owns a shop in Noida but lives in Delhi. He visits the shop occasionally which is managed by B. B usually orders goods from C in A's name for the shop, and pays them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in his name for the shop.

**Implied agency includes the following :**

- (a) **Agency by estoppel:** Where a principal, by his word or conduct, induces some third person to believe that acts or obligations of his agent were within his authority, he shall be estopped from denying it later.

*Example:* A tells T within presence of P that he (A) is agent of P. P does not object to this statement of A. T supplies goods to A. P is liable to pay for the price of goods to T because by keeping silence he led T to believe that A is his agent.

- (b) **Agency by holding out:** It is a part of the law of estoppel. A principal cannot deny the agent's authority when he does some prior positive or affirmative act establishing the agency of the other person.

*Example:* P allows his servant A to buy goods for him on credit from C and pays for them regularly. On one occasion, P pays A cash to purchase goods. A purchases goods on credit and pockets the money C can recover the price from P since through previous dealings, P has held out A as his agent.

- (c) **Agency of necessity:** Agency by necessity arises in the following circumstances.

- ◆ **Emergency [Section 189]:** An agent has authority, in an emergency, to do all such acts, for protecting his principal from loss, as would be done by a man of ordinary prudence, e.g. Agent may have to sell goods instantly if it is of perishable nature, and cannot withstand until further instructions from Principal.
- ◆ **A person entrusted with another's property:** A person becomes an agent, where he is in possession of goods belonging to another and is under compulsion to protect the same from loss or destruction. e.g. A horse sent by rail was not taken delivery at the destination, The Station Master had to feed the horse. The Station Master becomes an Agent by necessity and hence the owner shall compensate him.
- ◆ **Husband-wife:** When the husband and wife are living together and the husband does not provide for her necessities, wife has an implied authority as an agent to pledge her husband's credit for bare necessities.

- (3) **Operation of law:** When the relationship arises between the persons as per provisions of the present applicable laws, it is said to be an agency by operation of law.

*Example:* Partners are considered as agents of each other and also of the firm. The managements of a company is considered to act as an agent of the company.

- (4) **Agency by ratification:** Separately discussed.

**Question 127] Write a short note on: Types of agents****Write a short note on: Mercantile agents****CS (Foundation) – Dec 1996 (5 Marks)****Ans.:** Agents can be classified into following types:

- (1) **Special Agent:** When agent is appointed to perform a particular transaction, such agent is known as special agent. e.g. Agent appointed for sale of a house property. Such agent has limited authority. Such agent cannot bind principal for acts other than for which he is employed.
- (2) **General Agent:** When agent is appointed to do all acts connected with a particular trade, business or employment. Authority of such agent is wide and continues till agency is terminated. However, principal may limit his authority.
- (3) **Universal Agent:** When agent is appointed to do all acts for the principal, such agent is known as universal agent. Authority of such agent is unlimited. All acts of agent bind his principal provided that his principal acts are legal.
- (4) **Commercial or Mercantile Agents:** Agent who is authorized to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods is known as mercantile agent. It includes banker, factor, auctioneer, broker, commission agent, & *del-credere* agent.
- (5) **Non-mercantile Agents:** These include solicitors, attorneys, C & F agents, insurance agents and wife, etc.

**Question 128] Write short notes on: Pretended Agent****Ans.:** A pretended agent is one who represents to be an agent of another when in reality he has not such authority from him at all.**Liability of pretended agent [Section 235]:** A person untruly representing himself to be an authorized agent of another, and inducing a third person to deal with him as Agent, is liable (if his alleged employer does not ratify his acts) to make compensation for any loss or damage incurred by such third person from such dealing.**No right to insist performance:** The pretended agent has no right to proceed against that person (third party) for performance of the contract.**Question 129] Write short notes on: Sub-agent****CS (Foundation) – Dec 2006 (5 Marks)****A delegate cannot further delegate. Explain the statement and give the exception to the rule.****CS (Foundation) – Dec 2004 (5 Marks)****Ans.:** “Sub-agent” defined [Section 191]: A sub-agent is a person employed by, and acting under the control of, the original agent in the business of agency.**Appointment of sub-agent:** The general rule is delegate cannot further delegate. Hence, a sub-agent may be appointed only where:

- Expressly permitted by the principal or inferred from the conduct of the principal.
- Ordinary custom of trade permits the delegation of authority by an agent.
- Nature of agency is such that it is necessary to appoint a sub-agent.
- Nature of job assigned to agent is purely clerical and does not involve exercise of discretion.
- In an unforeseen emergency.

**Relationship between principal and agent:**

- There is no privity of contract between the sub-agent and the principal.
- Sub-agent cannot sue the principal for remuneration.
- Principal cannot sue the sub-agent for any moneys due from him.

- Principal has a concurrent right to proceed against the agent and sub-agent when the sub-agent is guilty of fraud or wilful wrong.

**Representation of principal by sub-agent duly appointed [Section 192]:** A sub-agent properly appointed can represent principal and bind him by his acts as if he were an agent originally appointed by the Principal.

**Agent's responsibility for sub-agent appointed without authority [Section 193]:**

- Where an agent, without having authority to do so, has appointed a sub-agent, he becomes the principal for such sub-agent.
- The sub-agent cannot represent the original principal, or make the original principal responsible for his acts.
- Sub-agent can only bind the agent, who appointed him, by contracts entered into with third parties.
- The original agent of the principal is responsible to both the principal and third parties for any act of the sub-agent.

**Termination of sub-agent's authority [Section 210]:** The termination of authority of an Agent causes termination of authority of all sub-agents appointed by him.

**Question 130] Write short notes on: Substituted agent**

**Ans.:** Where an agent, holding authority to name another person, has named another person accordingly, such person is known as substituted agent. Such agent works under the control and directions of principal. Privity of contract exists between principal and substituted agent and he is directly liable to principal for his acts. Such agent can directly claim remuneration from principal.

**Question 131] Distinguish between: Sub-agent and substituted agent**

**CS (Foundation) - Dec 1999 (5 Marks)**

**Ans.:** Following are the main points of distinction between sub-agent and substituted agent:

Points	Sub-Agent	Substituted Agent
<b>Meaning</b>	Sub-agent is a person employed by, and acting under the control of, the original agent in the business of agency.	Where an agent, holding authority to name another person, has named another person accordingly, such person is known as substituted agent.
<b>Appointing authority</b>	Sub-agent works under the control and direction of the agent.	Substituted agent works under the control and directions of principal.
<b>Privity of contract</b>	There is no privity of contract between principal & sub-agent.	There is privity of contract exists between principal and substituted agent.
<b>Delegation</b>	Agent delegates a part of his work to sub-agent.	Principal directly delegate part of work of agent to substituted agent.
<b>Accountability</b>	Sub-agent is responsible agent.	Substituted agent is directly responsible to principal.
<b>Right</b>	Sub-agent has right of action against agent for remuneration due to him.	Substituted agent can sue the principal for remuneration due to him.
<b>Liabilities</b>	Agent is liable for acts of sub-agent as long as sub-agency continues.	Agent is not liable for acts of substituted agent.

**Question 132] Discuss the nature and extent of authority of an agent.**

**Ans.:** Agent has the authority to do every lawful thing which is necessary in order to do such act.

*Example:* P in New York appoints Z in Madras to collect a debt due to him from B. Z may take such action as is necessary for collection of debt and giving a valid discharge for the same.

Agent has the authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

*Example:* A employs B as his agent to carry on his business of a ship-builder. B may purchase timber & other materials, and hire workmen for the purpose of carrying on the business.

**Enforcement and consequences of agent's contract [Section 226]:** Contracts entered into through an agent, and obligations arising from acts done by an Agent, may be enforced in the same manner and will have the same legal consequences as if the contracts had been entered into and the acts are done by the principal in person.

The authority of an agent to bind his principal may be:

- (2) **Actual or real authority:** It may be express or implied and depends upon nature of act or business or things which are incidental to business, as are usually done in carrying it out, and usual customs and usages of trade.
- (3) **Ostensible or apparent authority:** It coincides with actual authority or may at times exceed the actual authority. Apparent authority emanates from some conduct of the principal. It may be created by :
  - **Estoppel:** If a person permits or represents another to act on his behalf, so that any reasonable person would infer that a relationship of principal and agent had been created, then he will be estopped from denying his agent's authority and getting himself relieved from his obligations to third parties by proving that no such relationship in fact existed. The principal will be bound by the agent's acts if he has given sufficient grounds for another person to believe that they are done with the principal's authority.
  - **Legal presumption:** Where a married woman is cohabiting with her husband, there is a presumption that she has the authority to pledge his credit for necessities.
- (4) **Authority in an emergency [Section 189]:** An agent has authority in an emergency to do all such acts for protecting his principal from loss, as would be done by a person of ordinary prudence.

**Question 133]** Anish instructed Yogesh, a transporter, to send the consignment of tomatoes to Kolkata. After covering half the distance, Yogesh found that tomatoes will perish before reaching Kolkata. He sold the same at half the market price. Anish sued Yogesh. Will he succeed?

CS (Foundation) - June 2003 (5 Marks)

**Ans.:** As per Section 189, an agent has authority in an emergency to do all such acts for protecting his principal from loss, as would be done by a person of ordinary prudence.

As per the facts given in case Yogesh will be treated as agent in emergency as tomatoes is perishing goods and he sold the same at half price to save the Anish from bigger loss. Hence, Anish will not succeed.

**Question 134]** Write a short note on: Agency by ratification

CS (Foundation) - Dec 2001 (5 Marks), June 2004 (5 Marks)

CS (Foundation) - June 2006 (5 Marks), June 2009 (5 Marks)

**Ans.:** Ratification means confirm or accept or give consent after the act or event. As per Section 197 such ratification may be express or implied. After ratification, principal is liable for all the acts and consequences of act and also get all rights under the contract, from the date of action of agent.

*Example:* A without authority, buys goods for B, later B sells them to C on his own account, B's conduct implies a ratification of purchase made for him by A.

*Example:* P, without Q's authority, lends money to R. Afterwards Q accepts interest on the money from R. Q's conduct implies a ratification of the loan.

**Requisites to a valid ratification:**

- (1) The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract.

- (2) Principal must be in existence at the time of contract. For example, company cannot ratify the contracts entered by promoters prior to incorporation.
- (3) Principal should have contractual capacity both at the time of contract and at the time of ratification. A minor on whose behalf a contract is made, cannot ratify it on attaining majority.
- (4) Ratification must be made within a reasonable time. What is reasonable time depends on the circumstances of each case.
- (5) Ratification is valid only when the principal who ratifies has a full knowledge of the facts. Ratification should be done within a reasonable time.
- (6) The act to be ratified must be a lawful one. Ratification of an illegal act or an act, which is void *ab-initio*, is not possible.
- (7) Ratification can be made whole contract. Principal cannot ratify in part which is beneficial to him and leave the rest. Ratification must be communicated to the party who is sought to be bound by act done by principal.
- (8) Ratification should not put third party to damages.
- (9) Ratification relates back to the date of the act of agent.

**Question 135] State the duties of an agent.**

**Ans.:** Duties of an agent are as follows:

- (1) **Not to delegate authority [Section 190]:** The agent cannot lawfully employ another person to perform acts, which he has expressly or impliedly undertaken to perform himself. However, subject to trade practices, he can appoint a sub-agent.
- (2) **To protect interest of principal in case of death [Section 209]:** Agency terminates by death of the principal, or principal becoming of unsound mind. Here, agent is duty bound to take on behalf of the representative of his late principal, a reasonable steps for protection and reservation of interests entrusted to him.
- (3) **To act as per principal's directions [Section 211]:** Agent is bound to conduct the business as per the principal's directions. In the absence of any directions, he shall act as per the customs prevailing in the business. Where the agent act otherwise, he shall be liable to make good any loss sustained, and account for any profits made to the principal.
- (4) **To exercise skill and diligence [Section 212]:** Agent is bound to act with reasonable diligence and use the skill he possesses to the proper conduct of the business.
- (5) **To render proper accounts [Section 213]:** Agent shall render proper accounts to his principal on demand rendering accounts does not mean showing the accounts but the accounts supported by vouchers.
- (6) **Communicate with principal [Section 214]:** In case of difficulty, the agent shall use all his reasonable diligence to communicate with his principal, and seek his instructions.
- (7) **Emergency [Section 189]:** In case of an emergency, the agent shall do all acts that a man of ordinary prudence would do to mitigate the loss.
- (8) **Not to deal on his own account [Sections 215 & 216]:** Agent shall not deal on his own account. He shall however do so with the consent of his principal, and after acquainting him with all material facts of the circumstances.
- (9) **Pay all sums received [Section 218]:** Agent is bound to pay to his Principal, all sums received on his account. He shall be entitled to deduct advances or expenses made for the business or remuneration due to him.
- (10) **No remuneration for business misconduct [Section 220]:** An agent who is guilty of misconduct in business of agency is not entitled to any remuneration in respect of that part of business.

- (11) **Not to make secret profits:** Except the lawful deductions towards his remuneration and expenses, the agent should deliver to the principal all moneys including secret commissions and profits made by him.
- (12) **Not to disclose information:** Agent is duty bound not to disclose any information, which he receives from his principal for the conduct of business.
- (13) **Liable to pay damages:** Agent is bound to pay damages to the principal for losses suffered due to not following the directions of the principal or non exercise of reasonable diligence.

**Question 136]** Suresh, an agent, has authority from his principal Bhupesh to sell goods on credit. Suresh sells goods on credit to Chandan without making proper enquiries about Chandan's financial status. At the time of sale, Chandan was insolvent. Is Suresh under a liability to compensate his principal Bhupesh? Why?

CS (Foundation) – June 2010 (5 Marks)

**Ans.:** As per **Section 212**, agent is bound to act with reasonable diligence and use the skill he possesses to the proper conduct of the business.

Suresh, an agent sells goods on credit to Chandan without making proper enquiries about Chandan's financial status. Hence, Suresh has not acted with reasonable diligence and he is liable for loss to his principal.

**Question 137]** What is the liability of the principal when the agent exceeds his authority?

**Responsibility of principal to third parties in a contract of agency.**

CS (Foundation) – Dec 2000 (5 Marks)

**Ans.:** **Principal how far bound, when agent exceeds authority [Section 227]:** When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

*Example:* A, being owner of a ship and cargo, authorizes B to procure an insurance for ₹ 4,000 on the ship. B procures a policy for ₹ 4,000 on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

**Principal not bound when excess of agent's authority is not separable [Section 228]:** Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

*Example:* A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for a sum of ₹ 6,000. A may repudiate the whole transaction.

**Question 138]** State the circumstances when an agent is personally liable for the acts of his principal.

CS (Foundation) – June 2000 (5 Marks)

**Ans.:** **Agent cannot personally enforce, nor be bound by, contracts on behalf of principal [Section 230]:** In the absence of contract to contrary, an agent cannot personally enforce contracts entered into by him, on behalf of his principal and cannot be personally liable. This is because the agent merely acts on behalf of his principal.

**Exceptions:** The agent is personally liable in the following cases:

- (1) **Foreign principal [Section 230]:** Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad.
- (2) **Undisclosed principal [Section 230]:** Where the agent does not disclose the name of his principal.
- (3) **Principal cannot be sued [Section 230]:** Where the principal, though disclosed, cannot be sued, e.g. Principal becoming of unsound mind, subsequent to appointment of agent.

- (4) **Acting for a principal not in existence:** Where the agent act for a principal who is not in existence at the time of making contracts, he shall be personally held liable, e.g. contracts entered into by Promoters before incorporation of a Company are made in their personal capacity and hence personally liable.
- (5) **Agency coupled with interest [Section 202]:** Where the agent has an interest in the subject matter of agency.
- (6) **Agent guilty of fraud [Section 202]:** Where an agent is guilty of fraud or misrepresentation in matters that are outside the scope of his authority, he is personally liable, and do not affect his principal.
- (7) **Agent exceeds authority & act not ratified:** Where an agent acts either without any authority or exceeds his authority, he shall be held personally liable when the principal does not ratify his acts.
- (8) **Agent receives or pays money:** Where an agent receives or pays money by mistake or fraud to a third party, he shall be personally liable to such third party. Also he can personally sue the third party if the fraud or mistake is accountable to such third party.
- (9) **Express agreement for personal liability:** Where an agent expressly agrees to be personally bound.
- (10) **Execution of contract in his own name:** Where an agent executes a contract in his own name, without disclosing that he is acting as agent for a principal, he shall be personally liable, e.g. An agent signs a negotiable instrument without making it clear that he is signing it as an agent only, he shall be held personally liable on the same. He would be personally liable as marker of P/N, even though he may be described as Agent.
- (11) **Trade custom or usage:** Where trade usage or custom makes an agent personally liable.
- (12) **Agent with special interest:** An agent with special interest or with a beneficial interest, e.g. a Factor or Auctioneer, can sue and be sued personally.
- (13) **Action against agent or principal [Section 233]:** Where the agent is personally liable, a person dealing with him may hold either him or his principal or both of them liable. The liability of principal and agent is joint and several.
- (14) **Exclusive liability [Section 234]:** When a person who has made a contract with an agent induce the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable that agent or principal respectively.

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**Question 139] What are the rights of an agent?**

**Ans.:** Rights of agent are as follows:

- (1) **Right of retainer [Section 217]:** The agent may retain, sums received on behalf of principal any law amount due to him.
- (2) **Right to remuneration [Sections 219 & 220]:** Payment of remuneration to agent becomes due on the completion of performance of the act of agency. However, he shall not be entitled to any remuneration if he is guilty of misconduct in the business.
- (3) **Right of lien [Section 221]:** Agent is entitled to retain the goods, papers and other movable or immovable property of the principal received by him. He can retain them only till the period the amount of commission, disbursements and remuneration for services, is due.
- (4) **Right to be indemnified [Sections 222, 223 & 224]:** Agent is entitled to be indemnified against all lawful acts done by him in the exercise of authority.
- (5) **Right to compensation [Section 225]:** When an agent suffers injury due to the principal's neglect or want of skill, he is entitled to be compensated by the principal for such loss/injury.

- (6) **Right of stoppage in transit:** Agent has a right to stop the goods in transit, like an unpaid seller, if he has bought goods for the principal by incurring a personal liability, and he is personally liable to the principal for the price of the goods sold.
- (7) **Liability of principal inducing others [Section 237]:** When the agent has acted beyond authority or incurred obligations to third parties on behalf of principal, and the principal induces such third party, by word or conduct, that the acts of the agent are within authority, the principal shall be liable to such third parties.

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**Question 140] State the circumstances under which an agency comes to an end.**

**Ans.:** Termination of agency may take place in any of the following ways:

**By act of parties:**

- (1) **Agreement:** Agency may be terminated at any time by mutual agreement between principal and agent.
- (2) **Revocation by principal:** Principal can revoke the agent's authority by notice.
- (3) **Renunciation by agent:** An agent may, after giving reasonable notice to principal, renounce the business of agency. Where an agency is for a fixed period and the agency is renounced without sufficient cause, principal shall be compensated.

**By operation of law**

- (1) **Completion of business:** Agency is for a particular act or business and such act or business is completed.
- (2) **Impossibility of performance:** The performance of the act of agency becomes impossible.
- (3) **Expiry of fixed period of time:** The agency is for a fixed period of time and such time has expired.
- (4) **Insanity or death of principal or agent [Section 209]:** In such a case, the agent should take all reasonable steps for the preservation of property, on behalf of principal or legal representatives of Principal, as the case may be.
- (5) **Destruction of subject matter:** An agency shall be terminated where its subject matter is either destroyed or rendered unlawful.
- (6) **Insolvency of principal:** Insolvency of principal terminates the agency.
- (7) **Termination of sub-agent's authority:** Termination of agent's authority puts an end to the sub-agent's authority also.
- (8) **Dissolution of a company:** Where a company is a principal or agent, the agency relationship terminates on its dissolution.
- (9) **Principal or agent becoming alien enemy:** Since contracts with alien enemy are not permissible, agency terminates when the countries of their domiciles turn was enemies.

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**Question 141] Write a short note on: Irrevocable agency**

**CS (Foundation) – Dec 1998 (5 Marks), June 2007 (5 Marks)**

**Ans.:** **Termination of agency [Section 201]:** Revocation of agency means termination of agency. The principal may revoke the authority granted to the agent at any time but before the authority has been exercised so as to bind the principal.

**Revocation when authority partly exercised [Section 204]:** Principal cannot revoke the authority granted to his agent, after the authority has been partly exercised, so far as regards such acts and obligations that arise from acts already done in the agency.

**Compensation for revocation [Section 205]:** When the principal revokes an agency without proper cause, he shall compensate the agent, particularly when there is an express or implied contract for continuation of agency till a stipulated time.

**Notice of revocation [Section 206]:** Principal shall give reasonable notice of revocation. Where he fails to give such reasonable notice, he shall make good any loss or damage arising out of such revocation.

**When termination of agent's authority takes effect [Section 208]:** Termination of authority:

- As regards the Agent, takes effect only when it comes to the Agent's knowledge.
- As regards a third party, takes effect only when it comes to the knowledge of such third parties.

Revocation may be express or implied from the conduct of principal and agent. **[Section 207]**

**Irrevocable Agencies:** An agency which cannot be revoked is called an irrevocable agency. The following agencies are irrevocable:

- (a) **When the agency is coupled with interest [Section 202]:** Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

*Example:* A, gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

- (b) When the agent has incurred a personal liability.
- (c) Where the agent has exercised his authority partly.

## SOCIETIES REGISTRATION ACT, 1860

**INTRODUCTION :** *After the Constitution of India came into force, the Societies Registration Act, 1860, has continued to be in force in all the States by virtue of Article 372 of the Constitution. A registered society is a legal entity but it is not a body corporate (Board of Trustees v. State of Delhi).*

*It is separate from its members. It can own properties. It is capable of suing or being sued. The position of a society is comparable with an incorporated company under the Companies Act, 2013. Hence, a Company Secretary has an important role to play in registration and management of a registered society. The main Act has been continuing to be applicable in all the States with some amendments made by almost all the States in operation, administration and management of societies within the respective States.*

**Question 1]** Explain the provision and procedures relating to registration of Societies under the Societies Registration Act, 1860.

CS (Inter) - Dec 1993 (5 Marks), 1998 (4 Marks),  
CS (Inter) - June 1996 (4 Marks), 2002 (3 Marks)

**Ans.: Societies formed by memorandum of association and registration [Section 1]:** Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any other purpose described in section 20, may, by subscribing their names to a memorandum of association, and filing the same with ROC form themselves into a society.

**Memorandum of Association [Section 2]:** The memorandum of association shall contain the following:

- Name of the society
- Object of the society
- Names, addresses and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by **not less than 3 members** of the governing body, shall be filed with the MOA.

**Registration & Fees [Section 3]:** On filing of MOA & certified copy of the rules and regulations of the society, the Registrar shall certify under his hand that the society is registered. There shall be paid to the Registrar for every such registration a fee of ₹ 50 or such smaller fees as the State Government may from time to time, direct.

### Procedure for Registration:

The following documents are required to be filed with the Registrar of Societies for registration of a society under the main Act or corresponding Acts of various State Governments:

- (1) Covering letter requesting for registration stating various documents annexed to it addressed to the registering authority and signed by all the subscribers to the MOA or by a person authorized by all of them.
- (2) MOA in duplicate containing:
  - Name of the society
  - Objects of the society
  - Names, addresses and occupation of the members of the governing body
  - Place of registered office of the Society, and
  - Names, addresses and full signatures of the seven or more persons subscribing their names to the Memorandum of Association. Their signatures should be witnessed.
- (3) Rules & Regulations/Bye-laws in duplicate duly signed by at least three members of the governing body.
- (4) Affidavit on non-judicial stamp paper of requisite value by the President or secretary of the society duly attested by Oath Commissioner or Notary Public or Magistrate of first class.
- (5) Documentary proof such as rent receipt or property tax receipt in respect of the Registered office of the Society or no-objection of the owner of the premises.
- (6) Registration fee in cash or by demand draft.

The formalities and requirements may differ from State to State. Hence, it is advised that the applicant should contact the registering authority of the State in advance. The Registering authority shall satisfy about the compliance of the provisions of the Act and correctness of the documents and only thereafter certify that the Society is registered under the main Act or the corresponding Act of the State. On registration, the society becomes a legal entity or a judicial person apart from its members. [*K.C. Thomas v. R.L. Gadeock* AIR 1970 Pat. 160/163]

As per Section 20, following Societies can be registered:

- Charitable Societies.
- Military Orphan Funds.
- Societies established at the several Presidencies of India.
- Societies established for the promotion of science, literature or the fine arts.
- The foundation or maintenance of libraries or reading rooms for use of its members or public.
- Galleries of Painting & other works of art.
- Collection of natural history, mechanical and philosophical inventions, instruments designs.

**Question 2]** 5 persons subscribed their signatures to the memorandum of association for the purpose of forming a society for paying expenses on education of poor students studying in Government school. They fulfilled all requirements for registration. Will the Registrar register the Society?

CS (Inter) - Dec 1995 (5 Marks), 1999 (4 Marks)

**Ans.:** As per Section 1, any seven or more persons associated for any literary, scientific, or charitable purpose, or for any other purpose described in Section 20, may, by subscribing their names to a MOA, and filing the same with ROC form themselves into a society.

In the given case only 5 members have subscribed their signatures to the memorandum. Hence, the Registrar will refuse registration.

**Question 3]** An application for registration of Society named Kautilya Institute of Legal Education & Training is submitted under the Societies Registration Act, 1860. A copy of memorandum of association and bye-laws is enclosed along with the prescribed fee. The Registrar refused to register the society on the ground that memorandum of association is not signed by seven members. Is the refusal justified ?  
CS (Inter) – June 2003 (4 Marks)

**Ans.:** As per Section 1, any seven or more persons associated for any literary, scientific, or charitable purpose, or for any other purpose described in Section 20, may, by subscribing their names to a MOA, and filing the same with ROC form themselves into a society.

In the given case, **below 7 members** have subscribed their signatures to the memorandum. Hence, the Registrar will refuse registration.

**Question 4]** How does the property of the Society vest under the Societies Registration Act, 1860?  
CS (Inter) – June 1992 (4 Marks)

**Ans.:** **Property of society how vested [Section 5]:** The property, movable and immovable belonging to a registered society shall vested in trustees or governing body of such society. In all civil and criminal proceedings may be described as the property of the governing body of such society for their proper title.

**Governing body defined [Section 16]:** The governing body of the society shall be the governors, council, directors, committee, trustees, or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

**Question 4A]** Mention the provisions of the Societies Registration Act, 1860 regarding the vesting of property of the society.  
CS (Executive) – June 2016 (5 Marks)

Alka Society was registered by seven individuals comprising relatives and close friends in 2014 for diffusing of political knowledge among the youth. It has now assets amounting to over ₹ 5 Crore. In whom does the property vest? Refer to relevant provisions and case law, if any, under the Societies Registration Act, 1860.  
CS (Executive) – June 2014 (5 Marks)

**Ans.:** **Property of society how vested [Section 5]:** The property, movable and immovable belonging to a registered society shall vested in trustees or governing body of such society. In all civil and criminal proceedings may be described as the property of the governing body of such society for their proper title.

In the case of *Board of Trustee, Ayurvedic and Unani Tibbia College v. State of Delhi A.I.R. 1962 SC 458*, the Board of Trustees of Tibbia College was dissolved by the Tibbia College in 1952 and the property which had vested in the Board of Trustees, passed to the newly constituted Board.

Thus, the assets worth ₹ 5 Crore of Alka Society will vest in its Board of Trustees.

**Question 4B]** State the provisions of the Societies Registration Act, 1860 relating to 'suits by and against society'.  
CS (Executive) – June 2015 (5 Marks)

**Ans.:** **Suits by and against societies [Section 6]:** Every registered society may sue or be sued in the name of President, Chairman, or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion.

It shall be competent for any person having a claim, or demand against the society, to sue the President or Chairman, or Principal Secretary or the trustees thereof, if on application the governing body some other officer or person be not nominated to be the defendant.

**Suits not to abate [Section 7]:** No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit proceedings shall be continued in the name of or against the successor of such person.

**Question 4C] Write a short note on: Enforcement of judgment against society**

**Ans.: Enforcement of judgment against society [Section 8]:** If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

**Question 5] Who is member under Societies Registration Act, 1860?**

**Ans.: Member defined [Section 15]:** A member is a person:

- Who is admitted to the Society according to the rules and regulations.
- Who has paid a subscription.
- Has signed the roll or list of member and
- Has not resigned in accordance with the rules and regulations.

Disqualified Members: A person shall not be counted as a member and shall not be entitled to vote whose subscription at the time shall have been in arrears for a period exceeding 3 months.

**Question 5A] What are rights and liabilities of 'member' of society registered under the Societies Registration Act, 1860?**  
**CS (Executive) – Dec 2015 (3 Marks)**

**Ans.: Rights of members of a society:**

- ◆ To receive notice of all special and annual general meetings.
- ◆ To vote at all meetings.
- ◆ To resolve all disputes among members and society or *inter se*.
- ◆ To receive copies of the rules and regulations and bye-laws.

**Liabilities of members of a society:**

- ◆ A member may be sued as a stranger by the society.
- ◆ Member, guilty of an offence to the society, is punishable as a stranger.
- ◆ Member causing breach of any rule or regulation or bye-law of the society is liable to pay penalty under the Bye-Laws.
- ◆ Member who is guilty of misfeasance or breach of trust or misapplication of funds in relation to the society shall be accountable to make good the loss so caused to the society.

**Question 6] A is not permitted to cast vote in the general meeting of a Society on the ground that he failed to pay his membership subscription for a period of seven months. A challenges the validity of this action. His plea is that being a member of Society he has right to cast his vote. Will he succeed?**  
**CS (Inter) – Dec 1997 (4 Marks)**

**Ans.: As per Section 15,** a person shall not be counted as a member and shall not be entitled to vote whose subscription at the time shall have been in arrears for a period **exceeding 3 months**.

As per facts given in case subscription of A has failed to pay his membership subscription for a period of seven month. Thus, he is disqualified for membership and therefore cannot be allowed to exercise his voting right at the meeting. Hence, societies action is justified.

**Question 7]** Mohan is a member of a registered Society and has regularly paid his subscription up to March, 2015. Thereafter, he fails to pay any subscription. In a meeting of the Society convened on 30th June, 2015. Mohan is not permitted to participate in the meeting and to cast his vote. Is the action justified?

CS (Inter) – June 1993 (5 Marks), Dec 2000 (4 Marks)

**Jolly, whose subscription for the Society is in arrear for a period exceeding two months, claims to vote in general meeting of Society. Can he vote?**

CS (Inter) – June 2002 (4 Marks)

**Ans.:** As per Section 15, a person shall not be counted as a member and shall not be entitled to vote whose subscription at the time shall have been in arrears for a period **exceeding 3 months**.

As per facts given in case subscription of Mohan has not failed to pay his membership subscription for a period exceeding 3 months. He is not disqualified for membership and therefore he can be allowed exercise voting right at the meeting. Hence, societies action is not justified.

**Question 8]** Is it obligatory on the governing body of Society to admit a person as a member?

**Ans.:** It is not obligatory on the governing body of Society to admit a person as a member. **The option is with the governing body to admit or not** a person who applies for membership on payment of subscription.

The discretion of the governing body is final concerning grant or refusal of admission to a person. [*Abhoy Pado Bose v. Queen's Anglo Sanskrit School, Lucknow 34.1.C.263 (Oudh)*]

**Question 9]** State the circumstances under which a society registered under the Societies Registration Act, 1860 may sue a member of society treating him as a 'stranger'.

CS (Inter) – June 2000 (4 Marks), Dec 2002 (4 Marks)

CS (Executive) – Dec 2016 (3 Marks)

**Ans.:** **Members liable to be sued as strangers [Section 10]:** A member of the Society is liable to be sued and treated as stranger in the following cases:

- ◆ When he is in arrears of subscription which he is bound to pay.
- ◆ When he is detained any property of the Society.
- ◆ When he has destroyed any property of the Society.

**In all above cases, the members may be sued for such arrears and damages but he can recover cost if he is successful in the suit.**

**Members guilty of offences punishable as strangers [Section 11]:** Member is also subject to prosecution & punishment as stranger for committing the following offences, if he:

- ◆ Steals, purloins or embezzles any money or other property.
- ◆ Wilfully and maliciously destroys or injures any property of the Society; or
- ◆ Forges any document, bond, security for money, receipt or other instrument where by the funds of the Society may be exposed to loss.

**Question 10]** Sudheer, a member of the Society has destroyed some property of the Society. Can he be sued as stranger under the Societies Registration Act, 1860? CS (Inter) – June 2001 (4 Marks)

**Ans.:** As per Section 10, a member of the Society is liable to be sued and treated as stranger if he has destroyed any property of the Society. Thus, Sudheer can be sued as stranger for destroying property of the Society but he can recover cost if he is successful in the suit.

**Question 11] Discuss the powers of Societies to alter, extend or abridge their purposes.**

CS (Inter) – June 1997 (4 Marks), Dec 1996 (4 Marks)

CS (Inter) – Dec 2001 (4 Marks)

**Ans.: Societies enabled to alter, extend or abridge their purposes [Section 12]:** Whenever it appears to the governing body of any society to alter, extend, or abridge purposes of the society or to amalgamate such society with any other society, such governing body may submit the proposition to the members of the society in a written report and may convene a **special meeting** for the consideration according to the regulations of the society.

Such proposition shall be carried into effect by sending by post a report to every member of the society 10 days prior to the special meeting.

Such proposal shall have been agreed by the votes of  $\frac{3}{5}$ <sup>th</sup> of the members of society in person or by proxy and confirmed by the votes of  $\frac{3}{5}$ <sup>th</sup> of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

**Procedure:** To achieve above purpose, the following procedure should be adopted :

- The governing body should fix a day & convene a special meeting.
- They should submit the proposition to the members in a written form, which should be delivered before 10 days prior to special meeting.
- At the appointed date meeting will be held.
- In meeting the proposal must be agreed by the votes of  $\frac{3}{5}$ <sup>th</sup> of the members present in person or by proxy.
- Then a second special meeting will be convened, at an interval of 1 month after the first meeting.
- In the second meeting, the agreement & proposition must be confirmed by  $\frac{3}{5}$ <sup>th</sup> of the members present.
- Only thereafter, the proposition shall be carried into effect.

The procedure laid down in Section 12 cannot be regarded as directory but is also **mandatory** for a registered Society. [*Shridhar Misra vs. Jai Chandra Vidyalkar*]

**Question 12] A, a society registered under the Societies Registration Act, 1860 with a view to amalgamate with another registered Society, convened a general meeting of the members. At the meeting, the secretary of the Society placed before the members, the intention of the governing body and the special resolution regarding amalgamating. Out of 100 members of the Society, 99 members were present in the meeting. The resolution was put to vote and 51 members voted in favour of the resolution. Discuss whether Society can effect amalgamation with the said Society on the strength of the resolution. Give reasons for your answer.**

CS (Inter) – Dec 1994 (5 Marks)

**Ans.: Section 12** provides that, whenever it appears to the governing body of any society to alter, extend, or abridge purposes of the society or to amalgamate such society with any other society, such governing body may submit the proposition to the members of the society in a written report and may convene a **special meeting** for the consideration according to the regulations of the society.

Such proposition shall be carried into effect by sending by post a report to every member of the society 10 days prior to the special meeting.

Such proposal shall have been agreed by the votes of  $\frac{3}{5}$ <sup>th</sup> of the members of society in person or by proxy and confirmed by the votes of  $\frac{3}{5}$ <sup>th</sup> of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

As per the facts given in case, only 51 members voted in favour of the resolution out of 99 members. As resolution is not passed by 3/5<sup>th</sup> majority and hence amalgamation cannot be effected.

**Question 13] Detail the legal provisions for dissolution of a society under the Societies Registration Act, 1860.**

CS (Executive) – Dec 2014 (4 Marks)

**Ans.: Provision for dissolution of societies and adjustment of their affairs [Section 13]:** Any number not less than 3/5<sup>th</sup> of the members of any society may determine that it shall be dissolved and thereupon it shall be dissolved.

All necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities according to the rules of the society applicable.

In the event of any dispute arising among the governing body or the members, the adjustment of its affairs shall be referred to the principal court of original civil jurisdiction of the district in which the chief building of the society is situate; and the court shall make such order in the matter as it shall deem requisite.

**Assent Required:** No societies shall be dissolved unless 3/5<sup>th</sup> of the members shall have expressed a wish for dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose.

**Government Consent:** Whenever any Government is a member of, or a contributor to, or otherwise interested in any registered society, such society shall not be dissolved without the consent of the Government.

**Upon a dissolution no member to receive profit [Section 14]:** If upon the dissolution of any registered society there remain any surplus after the satisfaction of all its debts and liabilities, the same shall not be paid to or distributed among the members of the society but shall be given to some other society, to be determined by the votes of not less than 3/5<sup>th</sup> of the members present personally or by proxy at the time of the dissolution, or in default thereof as per order of court.

**Clause not to apply to joint-stock Companies:** This clause shall not apply to any society which has been founded or established by the contributions of shareholders in the nature of a joint-stock company.

**Question 13A] Detail the consequences of dissolution of a society under the Societies Registration Act, 1860.**

CS (Executive) – Dec 2014 (4 Marks)

**Ans.: Consequences of dissolution of a society:** Dissolution of a society results in cessation of its activities. Its liabilities are to be settled suitably and its surplus assets are to be given to another society or the Government in terms of its rules and regulations. If the rules do not provide in the matter, the governing body of the society shall take appropriate steps with requisite majority vote or as directed by the Registrar or the Court. But in no circumstances, the surplus assets of the dissolved society can be paid or distributed amongst its members or any of them.

**Question 14] A Society registered under the Societies Registration Act, 1860 has State Government also as its member. The 3/5<sup>th</sup> of other members of the Society passed a resolution to dissolve the society forthwith can State Government challenge this resolution and if, so on what ground?**

CS (Inter) – June 1994 (5 Marks), June 1999 (4 Marks)

**Ans.:** According to Section 13, whenever any Government is a member of, or a contributor to, or otherwise interested in any registered society, such society shall not be dissolved without the consent of the Government. Therefore, State Government can challenge the resolution passed by society.

**Question 15] For the purpose of dissolution of a society under the Societies Registration Act, 1860 a general meeting of the member of the Society was convened. In that meeting, a proposal for dissolution of the Society was placed by majority of the members. The said proposal was passed by three-fifth of the members of the Society present and voting. Is the dissolution valid?**

CS (Inter) – Dec 2001 (4 Marks)

**Ans.:** No, dissolution is not valid. **Section 13** requires voting of  $\frac{3}{5}$ <sup>th</sup> of total members for passing resolution of dissolution of the Society. In the instant problem the proposal was passed by  $\frac{3}{5}$ <sup>th</sup> of the members present & voting.

If there are 100 members of society out of only 80 members are present in meeting. Then  $\frac{3}{5}$ <sup>th</sup> to total members should approve for dissolution of society. (not  $\frac{3}{5}$ <sup>th</sup> of 80 members i.e. members present and voting).

**Question 16] Discuss the provision relating to enforcement of judgment against a Society, registered under the Societies Registration Act, 1860?** **CS (Inter) – Dec 1995 (5 Marks)**

**Ans.: Enforcement of judgment against society [Section 8]:** If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

**Question 17] State the powers and duties of the Registrar of Societies under the Societies Registration Act, 1860.** **CS (Executive) – Dec 2014 (5 Marks)**

**Ans.:** As per the main Act and the corresponding Acts of various States different powers and duties of the Registrar is as follows:

- ◆ Allow inspection of documents by any person and provide certified copy thereof on payment of fees as prescribed.
- ◆ Call information, explanation or returns from the societies relating to the affairs, employees, documents filed, accounts etc.
- ◆ Hold inquiries and settle disputes *suo moto* or at the request of the members of the governing body or other members.
- ◆ Investigate into the affairs of the society.
- ◆ Cancel registration on happening of certain events.
- ◆ Refuse registration, if the name is undesirable or identical or the objects are contrary to any other law etc.
- ◆ Order amendment of MOA, Rules and Regulations, Bye-laws of society.
- ◆ Seize and take possession of the books and records, funds and property of the society,
- ◆ Summon and enforce attendance of witness including the parties interested for giving evidence and producing documents.
- ◆ Order for auditing of the accounts of the society.
- ◆ Compounding offences on application with fee.
- ◆ Settle disputes regarding election of the office bearers.
- ◆ Restoration of the property or money of the society.
- ◆ Removal of the defunct society from the register of societies.
- ◆ Condonation of delay in filing of documents.
- ◆ Appointing liquidator.

## INDIAN TRUSTS ACT, 1882

**INTRODUCTION :** The concept of 'trust' relates to the ancient times. When the properties were dedicated for charitable, pious, religious, social welfare, educational, medical purposes. The Trust laws came to India via English Trust law which stipulates dual ownership of trust property i.e. legal title vests with the trustee while equitable title vests with the beneficiary. On this basis, Indian Trusts Act, 1882 was enacted. The Act codifies the law relating to private trusts and private trustees under different subject heads which include Creation of trusts; Duties and liabilities of trustees; rights and powers of trustees; disabilities of trustees; rights and liabilities of the beneficiary; Vacating the office of trustee; The extinction of trusts and; Certain obligations in the nature of trusts. The Act came into force on 1st March, 1882 and extends to the whole of India except the State of Jammu and Kashmir and the Andaman and Nicobar Islands.

### MEANING & TYPES OF TRUSTS

**Question 1] What do you understand by 'Trust' under the Indian Trust Act, 1882?**

**Ans.: Trust [Section 3]:** Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

<b>Author</b>	The person who creates trust.
<b>Trustee</b>	The person in whose favour confidence is declared.
<b>Beneficiary</b>	The person for whose benefit the confidence is accepted.
<b>Trust property</b>	The subject matter of the trust. It also called as <b>beneficial interest</b> .
<b>Instrument of Trust</b>	The instrument declaring the trust

**Example:** Ram transfers certain property in favour of Shyam for the benefit of his wife and children. This is trust. In this case Ram is author of trust; Shyam is Trustee; Wife and children of Ram are beneficiary.

**Question 2] Distinguish between: Ordinary Contract & Trust**

**How does 'trust' differ from contract? Explain briefly.**

**CS (Executive) - Dec 2015 (3 Marks)**

**Ans.:** Following are the main points of difference between ordinary contracts & trust:

Points	Ordinary Contract	Trust
<b>Meaning</b>	A Contract is an agreement which is enforceable by law.	Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

Points	Ordinary Contract	Trust
Consideration	Contract without consideration is void <i>ab initio</i> .	No consideration is required for creation of trust. However, consideration to trustee may be fixed by way of remuneration.
Relationship	There is no fiduciary relationship between parties to a contract.	There is always a fiduciary relationship between trustee and beneficiary.

**Question 3] Distinguish between: Trust & Bailment****CS (Inter) - June 2006 (5 Marks)**

**Ans.:** Following are the main points of difference between trust & bailment:

Points	Trust	Bailment
Meaning	Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.	Bailment is the delivery of goods, by one person to another, for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of, according to the instructions of the person delivering them.
Property	A trust may be created for both movable and immovable properties.	A bailment can be created for movable properties only.
Right in property	A trustee becomes the full owner of trust property.	A bailee acquires special property only.
Obligation	The obligation of a trustee is equitable.	The obligation of the bailee is legal.

**Question 4] Distinguish between: Trust & Agency.****CS (Executive) - Dec 2010 (4 Marks)**

**Ans.:** Following are the main points of difference between trust & agency:

Points	Trust	Agency
Meaning	Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.	Agency is a contract in which one person authorize another to act on behalf of former.
Ownership	A trustee is the full owner of the trust property.	An agent has no title to the property.
Control	A trustee acts on his own right.	An agent acts on behalf of his principal and is subject to his control.
Personal Liability	A trustee may be personally liable.	An agent is generally not personally liable.

**Question 5] Write a note on: Classes of Trust****Write short note on: Constructive Trust****CS (Inter) - June 1995 (5 Marks)****Distinguish between: Revocable & Irrevocable Trusts****CS (Inter) - June 2007 (4 Marks)**

**Ans.:** Trusts are divisible into several classes according to the mode of their creation. Some of the important classes are as follows:

- (1) **Simple & Special Trusts:** Where the trustee is merely to hold the estate without having any active duties to perform it is called a simple trust. Where, however, the trust has been created for a particular object or purpose there is a special trust.
- (2) **Oral & Written Trusts:** A trust may be declared either orally or through an instrument in writing. However, a trust in relation of movable property can be declared orally by transferring the possession of the property with a direction that the property be held in trust. In regard to a private trust for immovable properties, a written trust deed is pre-requisite.

- (3) Charitable or Religious Trust:** A charitable purpose is one designed to benefit, ameliorate, or uplift mankind mentally, morally, or physically. The relief of poverty, the improvement of government, and the advancement of religion, education, and health are some examples of charitable purposes. When trust is created for advancement and to uplift of particular religion it is called religious trust.
- (4) Express & Implied Trusts:** Express trusts are created by the act of parties either in words or in writing. While an implied trust is one which is deduced from the conduct of the parties and the circumstances of the transactions.
- (5) Public & Private Trusts:** Public trust is a trust created for the promotion of public welfare and not for the benefit of one or more individuals. It may or may not be a charitable trust. When trust is created for the benefit of one or more individuals, it is called private trust.
- (6) Revocable & Irrevocable Trusts:** A revocable trust is one which is revocable when it is created by a non-testamentary instrument or orally and a power of revocation has been expressly reserved by the settler. A trust may be revoked by the consent of all the beneficiaries who are competent to contract. All other trusts are irrevocable. Besides if a trust is created for charitable or religious purposes, such a trust cannot be revoked.
- (7) Public-cum-Private Trust:** There may be certain trusts whose part of the income may be applied for public purposes and a part may go to a private person or persons, Such trusts are known as public-cum-private trusts.
- (8) Constructive Trust:** A constructive trust is one which is not created by the express or implied act of the settler, but which is deemed by operation of law or arises by construction of law.
- (9) Resulting Trust:** A resulting trust is one, which is implied in favour of the settler or his representative. It comes into existence where the property is incompletely conveyed or where on a conveyance, the beneficial interest in the property is not completely disposed of and the property or the undisposed beneficial interest in it reverts back to the settler. When a trust is bad as a charitable trust, a resulting trust comes into existence in favour of the settler.
- (10) Executed & Executory Trust:** An executed trust is one in which the limitation of the estate and the beneficiaries are prescribed by the settler in the trust deed itself and no further instrument is required. An executory trust is not complete in itself and its execution is left to the judgment of the trustees. Here, the settler instead of expressing exactly what he means, tells the trustees to do their best to carry out his intentions.

**Question 6] Write a short note on: Doctrine of *cypres* relating to trusts.**

CS (Inter) – Dec 2005 (4 Marks), Dec 2007 (4 Marks)

CS (Executive) – Dec 2012 (4 Marks), Dec 2016 (5 Marks)

**Ans.:** When the original objective of the settlor or the testator became impossible, impracticable, or illegal to perform, the cy-pres doctrine allows the Court to amend the terms of the charitable trust as closely as possible to the original intention of the testator or settlor to prevent the trust from failing.

*Cy pres* means **near to it**. The doctrine of *Cy pres* applies only to **Charitable Trust**. It can never die though its nature may be changed.

Where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed, but the law will substitute another mode *Cy Pres*, that is, as near as possible to the mode specified by the donor.

However, the above doctrine is subject to the doctrine of severability, i.e., the doctrine of *Cy Pres*, applies if the nature of the charitable object is general and not specific.

**Question 7]** Amitabh has executed a trust deed for the creation of a cancer hospital in his village for the treatment of cancer patients in the nearby area. But there has already been a hospital for the treatment of such patients in that area for the last 50 years. Ironically, with all other facilities to the public, there is no medical college in the vicinity of that area. Thus, in the midst of such circumstances, whether the creation of another cancer hospital would be fruitful for the public at large or whether it would be desirable to open medical college. Advise a suitable device through which the purpose of the trust deed may be saved and materialized.

CS (Inter) - Dec 2002 (5 Marks)

**Ans.:** Amitabh wants to create the charitable trust by creating the cancer hospital in his village for the nearby area. But, a cancer hospital being already in existence, another cancer hospital in the same area would be infructuous. The purpose of the trust is valid and expedient but indirectly carries no meanings. Hence, the trust would be expedited for its near purpose where the public at large may be benefited and that is the urgent need of the medical college for the student.

Thus, by application of the doctrine of *Cy Pres*, the trust will be saved and its purpose will be materialized for the needy students. The doctrine of *Cy Pres* means near to it, which is applied only to charitable trusts. The Supreme Court observed that the *Cy Pres* doctrine applies where a charitable trust is initially impossible or impracticable and the Court applies the property *Cy Pres* viz. to some other charitable purpose as nearly as possible, resembling the original trust. [*Rajabather Mudaliar vs. M.S. Vadivelu Mudaliar* [1969] RD-SC 227] Hence, the trust may be created in the form of a medical college and not for a cancer hospital.

**Question 8] Distinguish between: Private & Public Trust**

**Ans.:** The following are the main points of difference between public trust & private trust:

Points	Private Trust	Public Trust
<b>Beneficiaries</b>	In private trusts, beneficiaries are definite and ascertained or individuals who within a period of time can be definitely ascertained	In public trust, the beneficial interest must be vested in an un-ascertained or fluctuating body of persons – either public at large or some considerable portion of it answering a particular description.
<b>Concern</b>	Private trusts concern only individuals or families for private conveniences and support.	A public trust is of permanent and indefinite character where direction cannot be extended by the will of the settler beyond the bounds of legal limitations. They are constituted for the benefit of public at large or sections thereof.
<b>Rule against perpetuities</b>	Private trusts are subjected to the rule against perpetuities.	Public trusts are an exception to rule against perpetuities.
<b>Ending trust</b>	In the case of a private trust, it is competent for the beneficiaries being <i>Sui Juris</i> to put an end to the trust or to agree to divert the trust funds to a purpose, different from the original object.	In the case of a public trust such a course is not permissible.
<b>Joint trustees</b>	In the case of private trust, the office of trustee is a joint one. The trustee must act together as a body. Where the administration of the trust is vested in a number of trustees, they all form one collective trustee and therefore must execute the duties of their office in office in their joint capacity.	In the case of a public trust, where there are a number of trustees, in the absence of a provision to the contrary in the instrument of foundation, a majority of trustees can bind the minority.
<b>Example</b>	The most common example of private trust is where a person creates a trust by deed or by will, providing for the enjoyment of his property by members of his family and descendants.	On the other hand, the essence of public trust lies in its being, for the benefit of the public as a whole or a section of the public and in its permanence.
<b>Enforcement of the trust</b>	In the case of a private trust, it is the beneficiary alone who can apply to enforce the trust.	A breach of trust in the case of a public trust cannot be condoned by any member of the public. The Advocate General or the Collector or two member of the public with their leave are the only persons who can apply to the court to enforce the trust.

## CREATION OF TRUSTS

### Question 9] State the purposes for which trust may be created.

**Ans.: Creation of Trust - Lawful purpose [Section 4]:** Trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is

- (a) Which is **forbidden by law**
- (b) Which is of such a nature that if permitted it would **defeat the provisions of any law**
- (c) Which is **tainted with fraud**
- (d) Which **involves or implies injury to any person**
- (e) Which is **injurious to the property** of any person
- (f) Which is **immoral** in the opinion of the Court or
- (g) Which the Court regards as **opposed to public policy**.

Every trust of which the purpose is unlawful is void and where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

#### Illustrations (as given in the Indian Trust Act, 1882)

- (a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.
- (b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.
- (c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

**Question 10] Aditya transfers his property in trust in favour of Raman with the direction that the trust property be used for the business of contraband opium and out of the profits of this business, maintenance may be given to Aditya's children. Is this a valid trust?**

CS (Inter) - Dec 1992 (5 Marks), 2000 (4 Marks)

**Ans.:** As per **Section 4**, trust may be created for any lawful purpose. It is further provided that every trust of which the purpose is unlawful is void and where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

In the given case the trust is made for two purposes, i.e. for carrying on the business of contraband opium and to provide maintenance to children of the creator of the trust. Although, only the former object is unlawful and the other is legal, yet the whole of the trust is void, as the two objects are inseparable from each other.

### Question 11] State how the trust relating to movable & immovable property is created?

**Ans.: Trust of immovable property [Section 5]:** No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Thus, trust of immovable property can be created by an instrument in writing and registered, signed by the author of the trust or by will.

**Creation of trust of movable property [Section 5]:** Trust of movable property requires no writing or registration. The mere transfer of possession coupled with the intention of the parties that such delivery of possession should vest the property in the trustee is sufficient to create a trust.

**Question 12] Write a short note on: Creation of Trust**

CS (Inter) – June 1997 (4 Marks), Dec 1998 (5 Marks)

**Discuss the 'Certainties of a Trust'.**

CS (Inter) – Dec 1996 (5 Marks)

**Ans.: Creation of trust [Section 6]:** A trust is created when the author of the trust indicates with reasonable certainty by any words or acts:

- (a) An **intention** on his part to create thereby a trust,
- (b) The **purpose** of the trust,
- (c) The **beneficiary**, and
- (d) The **trust-property**, and transfers the trust-property to the trustee.

**Illustrations (as given in the Indian Trust Act, 1882)**

- (a) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.
- (b) A bequeaths certain property to B "hoping he will continue it in the family". This does not create a trust, as the beneficiary is not indicated with reasonable certainty.
- (c) A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.
- (d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.
- (e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and legacy to C. This is a condition, not a trust for A's creditors and C.

**Question 12A] Arun bequeaths certain property to Varun, requesting him to distribute it among such members of Chandan's family as Varun should think most deserving. Does it create trust? Give reasons.**

CS (Executive) – June 2015 (3 Marks)

**Raman bequeaths certain property to Mohan, requesting him to divide the bulk of it among Kapil's children. Does it create trust? Give reasons.**

CS (Executive) – Dec 2015 (3 Marks)

**Ans.: Creation of trust [Section 6]:** A trust is created when the author of the trust indicates with reasonable certainty by any words or acts:

- (a) An **intention** on his part to create thereby a trust,
- (b) The **purpose** of the trust,
- (c) The **beneficiary**, and
- (d) The **trust-property**, and transfers the trust-property to the trustee.

As per facts given in case no valid trust is created as beneficiaries are not indicated with reasonable certainty.

**Question 13] Who can create a trust?**

**Ans.: Who may create trusts [Section 7]:** A trust may be created:

- (a) by every person competent to contract, and
- (b) with the permission of a Principal Civil Court of original jurisdiction, by or on behalf of a minor.

**Question 14] Write a short note on: Subject of trust**

**Ans.: Subject of trust [Section 8]:** The subject-matter of a trust must be property transferable to the beneficiary. It must not be merely beneficial interest under a subsisting trust.

**Question 15] Who may be beneficiary?**

**Ans.: Who may be beneficiary [Section 9]:** Every person capable of holding property may be a beneficiary.

**Disclaimer by beneficiary:** A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

**Question 16] Who may be a trustee?**

**Ans.: Who may be trustee [Section 10]:** Every person capable of holding property may be a trustee. No one bound to accept trust.

**Acceptance of trust:** A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

**Disclaimer of trust:** Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

**Illustrations (as given in the Indian Trust Act, 1882)**

- (a) A bequeaths certain property to B & C, his executors, as trustees for D. B & C prove A's will. This is in itself an acceptance of the trust, and B & C hold the property in trust for D.
- (b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

**DUTIES, LIABILITIES & RIGHTS OF TRUSTEES****Question 17] State briefly the duties of a trustee.**

CS (Inter) - June 1996 (5 Marks), 1999 (5 Marks)

CS (Inter) - Dec 2001 (5 Marks)

CS (Executive) - Dec 2014 (3 Marks)

**Ans.:** Duties of trustee are as follows:

- (1) **Trustee to execute trust [Section 11]:** The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation. He can make any alteration in those directions only with the consent of beneficiaries who are competent to contract. If a beneficiary is incompetent to enter into a contract, the Principal Civil Court of original jurisdiction may give consent on behalf of the minor.

However, a trustee is not required to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

**Illustrations (as given in the Indian Trust Act, 1882)**

- (a) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.
- (b) A, a trustee of certain land for X, Y & Z, is authorized to sell the land to B for a specified sum. X, Y & Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.
- (c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it.

- (2) **Trustee to inform himself of state of trust property [Section 12]:** Trustee is bound to acquaint himself with the nature and circumstances of the trust-property.

**Illustrations** (as given in the Indian Trust Act, 1882)

- (a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.
- (b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

- (3) **Trustee to protect title to trust-property [Section 13]:** A trustee is bound to maintain, preserve and protect the trust-property.

**Illustration** (as given in the Indian Trust Act, 1882)

The trust-property is immovable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877 the trustee's duty is to cause the instrument to be registered.

- (4) **Trustee not to set up title adverse to beneficiary [Section 14]:** The trustee must not set up a title to the trust property, which is adverse to the interest of the beneficiary. Nor should he allow any person to do so.
- (5) **Care required from trustee [Section 15]:** A trustee is bound to deal with the trust-property as carefully as a *man of ordinary prudence* would deal with such property. If trustee has acted as a man of ordinary prudence then he is not responsible for the loss, destruction or deterioration of the trust-property.

**Illustrations** (as given in the Indian Trust Act, 1882)

- (a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.
- (b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker. B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.
- (c) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.
- (d) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.
- (e) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.
- (f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.
- (g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.
- (h) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

- (6) **Conversion of perishable property [Section 16]:** Where the trust is created for the benefit of several persons in succession, and the trust property is of a wasting nature or a future or

reversionary interest, the trustee is bound to convert the property in to property permanent and immediately profitable character.

**Illustrations** (as given in the Indian Trust Act, 1882)

- (a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed *in specie*. B should sell the houses, and invest the proceeds in accordance with Section 20.
- (b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed *in specie* appears clearly, and B should not sell them.

- (7) **Trustee to be impartial [Section 17]:** Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power he can exercise such power in good.

**Illustration** (as given in the Indian Trust Act, 1882)

A, a trustee for B, C & D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C & D.

- (8) **Trustee to prevent waste [Section 18]:** Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property commits, or threatens to commit, any act which is destructive or permanently injurious, the trustee is bound to take measures to prevent such act.
- (9) **Accounts & Information [Section 19]:** A trustee is bound:
- To keep clear and accurate accounts of the trust-property, and
  - To furnish full and accurate information of the trust-property at the request of the beneficiary
- (10) **Investment of trust-money [Section 20]:** Where the trust-property consists of money which cannot be applied immediately, the trustee can invest the money on various securities mentioned in Section 20.

**Question 18]** A is a trustee of a land with the power to lease it for 7 years. He enters into a contract with B to grant a lease of land for 7 years with a covenant to renew the lease at the expiry of the term. Can this covenant to renew the lease at the expiry of the term be specifically enforced?

CS (Inter) - Dec 1993 (5 Marks)

**Ans.:** As per **Section 11**, the trustee should obey the directions given in the deed of trust. He can make alterations only with the consent of all the beneficiaries provided they are competent to contract. In given problem, the trustee has exceeded his power; therefore contract cannot be specifically enforced.

**Question 19]** Rajesh is appointed trustee of his property by Brijesh authorizing him to sell the property for ₹ 2,00,000 and to use the sale proceeds for the benefit of his major sons Mahesh and Suresh. With the consent of both Mahesh and Suresh, Rajesh sells the trust property for ₹ 1,90,000. Examine the validity of the sale.

CS (Inter) - June 1999 (5 Marks)

**Ans.:** According to **Section 11**, the trustee is bound to obey the directions of the author of the trust. However, such directions can be modified with the consent of all the beneficiaries provided they are competent to contract. In the given problem, both beneficiaries, Mahesh and Suresh are major and competent to contract and have given consent for modification of the directions of the author of the trust. Hence, there is no breach of duty on the part of the trustee and the sale is valid.

**Question 20]** Anil, a trustee for Sunita and Children, is directed by the author of the trust to lend on Sunita's request, trust property to Sunita's husband Chander on the security of his bond. Chander becomes insolvent and Sunita request Anil to make loan to Chander. Is Anil bound to obey the direction given in the instrument of Trust? CS (Inter) – Dec 2002 (5 Marks)

**Ans.:** According to **Section 11**, the trustee is bound to obey the directions of the author of the trust. However, such directions can be modified with the consent of all the beneficiaries provided they are competent to contract. However, a trustee is not required to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

In view of the above mentioned provisions, if Anil makes the loan it will be manifestly injurious to the beneficiaries as Chander has become insolvent. Therefore, Anil can refuse to make the loan to Chander.

**Question 21]** Ajoy, a trustee for Bijoy, kept the cash belonging to the trust in his house with his own money from where it was stolen by his servant. Is Ajoy liable to make good the loss to Bijoy? CS (Inter) – June 2000 (5 Marks)

**Ans.:** As per **Section 15**, a trustee is bound to deal with the trust-property as carefully as a *man of ordinary prudence* would deal with such property. If trustee has acted as a man of ordinary prudence then he is not responsible for the loss, destruction or deterioration of the trust-property.

As per the facts given in case, it does not appear that trustee was negligent, or he did not take care as required from a man of ordinary prudence as he kept the money along with his own money in his house from where it was stolen by his servant with no fault of the trustee. Hence, Ajoy is not liable to make good the loss to Bijoy.

**Question 22]** What are the liabilities of trustee? CS (Inter) – June 2002 (8 Marks)

**Ans.:**

**(1) Liability for breach of trust [Section 23]:** If a trustee commits a breach of the trust, he is liable to make good the loss which the trust property of the beneficiary has suffered. However, in two cases he is not liable for such a loss:

- (i) Where the breach of the trust has resulted due to any fraud committed by the beneficiary; and
- (ii) Where the beneficiary, being competent to contract, has given his consent for that breach without any coercion or undue influence or subsequently acquiesced therein, with full knowledge of the facts.

**Illustrations (as given in the Indian Trust Act, 1882)**

- (a) A trustee improperly leaves trust-property outstanding, and it is consequently lost. He is liable to make good the property lost, but he is not liable to pay interest thereon.
- (b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.
- (c) A trustee is guilty of unreasonable delay in investing trust money in accordance with Section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.
- (d) The duty of the trustee is to invest trust-money in any of the securities mentioned in Section 20. Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

- (e) The instrument of trust directs the trustee to invest trust money either in any of such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.
- (f) The instrument of trust directs the trustee to invest trust money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.
- (g) Trust-property is invested in one of the securities mentioned in Section 20. The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.
- (h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

- (2) **No right to set-off [Section 24]:** A trustee cannot set-off the loss in respect of one portion of the trust property against gain to another portion of the trust property.
- (3) **Non-liability for predecessor's default [Section 25]:** A trustee is not liable for the acts and defaults of his predecessor.
- (4) **Liability for co-trustee [Section 26]:** Generally a trustee is not liable for a breach of the trust committed by his co-trustee. However, such a trustee will be liable in the following cases:
  - (a) Where he delivers his trust property to his co-trustee without seeing to its proper applications.
  - (b) Where he allows his co-trustee to receive the trust property and fails to make due inquiries about his co-trustee's dealing therewith and
  - (c) Where after he comes to know of the breach of the trust committed by his co-trustee, he either actively conceals it or does not take proper steps to protect the interest of the beneficiary.

However, a co-trustee who joins in signing a receipt for the trust property for the sake of conformity without actually receiving it shall not be liable merely by reason of his signature only. A trustee is liable for money and property actually received by him.

**Illustration** (as given in the Indian Trust Act, 1882)

A bequeaths certain property to B & C, and directs them to sell it and invest the proceeds for the benefit of D. B & C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for 2 years and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

- (5) **Several liability of co-trustees [Section 27]:** When co-trustees jointly commit a breach of trust, or when one of them, by his negligence, enables another trustee to commit a breach of trust, each trustee is liable to the beneficiary for the whole loss sustained by the beneficiary. If any one of the co-trustee pay the loss then he can recover share of loss from remaining co-trustees. However, such share of loss cannot be recovered from other co-trustees in case of fraud.
- (6) **Liability to pay interest [Section 28]:** In certain circumstances, a trustee is liable to pay simple or compound interest to the beneficiary.

**Question 22A]** Gyan, a trustee, improperly leaves trust property outstanding. If such trust property is subsequently lost, is Gyan liable to make good the property lost? Explain.

CS (Executive) – June 2016 (5 Marks)

**Ans.:** As per Section 23, if a trustee commits a breach of the trust, he is liable to make good the loss which the trust property of the beneficiary has suffered. However, in two cases he is not liable for such a loss:

- (i) Where the breach of the trust has resulted due to any fraud committed by the beneficiary; and
- (ii) Where the beneficiary, being competent to contract, has given his consent for that breach without any coercion or undue influence or subsequently acquiesced therein, with full knowledge of the facts.

**Example:** A trustee improperly leaves trust-property outstanding, and it is consequently lost. He is liable to make good the property lost, but he is not liable to pay interest thereon.

**Question 23]** A suit is filed against trustee Ajay for recovery of ₹ 10,000 on the ground that he has caused loss of this amount to the trust property. Ajay has also caused a gain of ₹ 7,000 to the trust property in another transaction. Can he claim set off of this amount.

CS (Inter) – June 1994 (5 Marks), Dec 1995 (5 Marks)

CS (Inter) – 1999 (5 Marks)

**Ans.:** As per Section 24, a trustee cannot set-off the loss in respect of one portion of the trust property against gain to another portion of the trust property. Thus, trustee cannot get set off of gain of ₹ 7,000 against the loss of ₹ 10,000.

**Question 24]** Ram, a trustee for Shyam, allows the trust to be executed solely by his co-trustee Chandan. Chandan misapplies the trust property. Whether Ram is personally answerable for the loss resulting to Shyam?

CS (Inter) – June 2001 (5 Marks), Dec 2001 (5 Marks)

**Ans.:** As per Section 26, generally a trustee is not liable for a breach of the trust committed by his co-trustee. However, such a trustee will be liable where he delivers his trust property to his co-trustee without seeing to its proper applications. Hence, Ram is liable for the loss resulting to Shyam.

**Question 25]** State briefly the rights of a trustee.

CS (Inter) – June 1996 (5 Marks), 1999 (5 Marks),

CS (Inter) – Dec 2001 (5 Marks)

CS (Executive) – Dec 2013 (5 Marks)

**Ans.:** The rights of the trustees are as follows:

- (1) **Right to title deeds [Section 31]:** Trustee is entitled to have in his possession the instrument of trust and all the documents of title relating solely to the trust-property.
- (2) **Right to reimbursement of expenses [Section 32]:** Every trustee may reimburse or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation, or benefit of the trust-property, or the protection or support of the beneficiary.
- (3) **Right to indemnity from gainer by breach of trust [Section 33]:** If third person has gained an advantage from a breach of trust then he must indemnify the trustee to the extent of the amount actually received by such person under the breach. However this right is not available if a trustee has committed fraud.
- (4) **Right to apply to Court for opinion in management of trust-property [Section 34]:** The trustee has right to take opinion, advice or direction from the Court on questions relating to the management and administration of the trust.

- (5) **Right to settlement of accounts [Section 35]:** When the duties of a trustee are completed he is entitled to have the accounts of the trust-property examined and settled and get an acknowledgment in writing to the effect that nothing is due to the beneficiary under the trust.
- (6) **General authority of trustee [Section 36]:** A trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

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**Question 26] State briefly the powers of trustee.**

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**Ans.:** The powers of trustee are as under:

- ◆ He can **sell the trust property** where instrument of the trust so empowers him.
- ◆ A trustee has power **to vary investments**.
- ◆ A trustee has a **power to apply the trust property for the maintenance** of property as provided in the instrument of trust.
- ◆ A trustee can **compromise claims** unless a contrary intention appears from the instrument of the trust.
- ◆ A trustee **can give receipt** for the money received on account of the trust.
- ◆ In case of death of one of the trustees, the other trustees have a right to act, unless contrary intention appears from the instrument of the trust.

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**Question 27] A, a trustee of a plot of land worth ₹ 10 lakhs, though not authorized by the instrument of trust to sell the trust property, sell it for ₹ 15 lakhs, with a view to investing the sale proceeds to get larger income than derived from the property itself. Examine the validity of A's action.**

CS (Inter) – Dec 1994 (5 Marks)

**Ans.:** A trustee has no right to sell the trust property unless the deed of trust confers such power on him. Hence the sale made by A is not valid.

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**Question 28] Describe the disabilities of trustee as provided in Indian Trust Act, 1882.**

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**Ans.:**

- (1) **Trustee cannot renounce after acceptance [Section 46]:** A trustee who has accepted the trust cannot afterwards renounce it except:
  - (a) With the permission of a principal Civil Court of original jurisdiction, or
  - (b) If the beneficiary is competent to contract, with his consent, or
  - (c) By virtue of a special power in the instrument of trust.
- (2) **Trustee cannot delegate [Section 47]:** A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless:
  - (a) The instrument of trust so provides, or
  - (b) The delegation is in the regular course of business, or
  - (c) The delegation is necessary, or
  - (d) The beneficiary, being competent to contract, consents to the delegation.

**Explanation:** The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

**Illustrations (as given in the Indian Trust Act, 1882)**

- (a) A bequeaths certain property to B & C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D & E upon the trusts of A's will.

- (b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.
- (c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

- (3) **Co-trustees cannot act singly [Section 48]:** When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.
- (4) **Control of discretionary power [Section 49]:** Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.
- (5) **Trustee may not charge for services [Section 50]:** In the absence of express directions a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust. Trustee can charge for services only as per instrument of trust or there is contract to that effect with the beneficiary or through order of Court.
- (6) **Trustee may not use trust-property for his own profit [Section 51]:** A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.
- (7) **Trustee for sale or his agent may not buy [Section 52]:** No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.
- (8) **Trustee may not buy beneficiary's interest without permission [Section 53]:** Trustee cannot without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust property. Such permission shall be given only when the proposed purchase, mortgage or lease is for the advantage of the beneficiary.
- Trustee for purchase:** No trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it or obtain a mortgage or lease for himself.
- (9) **Co-trustees may not lend to one of themselves [Section 54]:** A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

## RIGHTS & LIABILITIES OF BENEFICIARIES

**Question 29] Describe rights and liabilities of beneficiaries as provided in Indian Trust Act, 1882.**

**Ans.:** Important rights of the beneficiary of the trust are as follows:

- (1) **Rights to rents & profits [Section 55]:** The beneficiary has a right to the rents and profits of the trust-property subject to the provisions of the instrument of trust.
- (2) **Right to specific execution [Section 56]:** The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest.

**Right to transfer of possession:** Right to transfer of possession.-and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct. When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

### Illustrations (as given in the Indian Trust Act, 1882)

- (a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b) A bequeaths ₹ 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the ₹ 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

- (3) **Right to inspect and take copies of instrument of trust, accounts, etc. [Section 57]:** The beneficiary has a right to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust property and the vouchers by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.
- (4) **Right to transfer beneficial interest [Section 58]:** The beneficiary has right to transfer his interest if he is competent to contract.
- (5) **Right to sue for execution of trust [Section 59]:** Where no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee becomes impracticable, the beneficiary may institute a suit for the execution of the trust. In such case till new trustee are appointed the trust shall be executed by the Court.
- (6) **Right to proper trustees [Section 60]:** The beneficiary has a right to see that proper persons are appointed to protect and administer the trust property.
- (7) **Right to compel to any act of duty [Section 61]:** The beneficiary has a right that his trustee shall be compelled to perform his duty and restrained from committing any probable breach of trust.
- (8) **Wrongful purchase by trustee [Section 62]:** Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee.
- (9) **Following trust property [Section 63]:** Where trust property comes into the hands of a third person, the beneficiary may require such third person to admit that it is property subject to trust. Beneficiary may also institute a suit against such third person for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received thereof can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

**Liabilities:** If a beneficiary commits a breach of trust or obtains any advantage, the other beneficiaries may attach the interest of such a beneficiary until the loss caused by the breach has been compensated.

## VACATING THE OFFICE OF TRUSTEE

**Question 30] When the trustee may be discharged from his office?**

**Ans.: Discharge of Trustee [Section 71]:** The trustee may be discharged from his office only as follows:

- (a) By the extinction of the trust
- (b) By the completion of his duties
- (c) By such prescribed means in instrument of trust
- (d) By appointment of a new trustee in his place
- (e) By consent of himself and the beneficiaries being competent to contract, or
- (f) By the Court

**Question 31] Mention the provisions of the Indian Trusts Act, 1882 regarding extinction of a trust.**

CS (Inter) – June 2008 (8 Marks)

CS (Executive) – June 2016 (5 Marks)

**Ans.: Trust how extinguished [Section 77]:** A trust is extinguished:

- (a) When its **purpose** is completely **fulfilled**
- (b) When its **purpose** becomes **unlawful**; or
- (c) When the fulfilment of its **purpose becomes impossible** by destruction of the trust-property or otherwise; or
- (d) When the trust, being revocable, is expressly **revoked**.

**Question 32] Write a short note on: Revocation of trust**

CS (Inter) – Dec 1994 (5 Marks)

**Ans.: Revocation of Trust [Section 78]:** If a trust is created by a will, it may be revoked by the revocation of the will. A trust which has been created otherwise, by an instrument other than a will or orally can be revoked only:

- (a) With the consent of all the beneficiaries competent to contract
- (b) By the exercise of a power of revocation expressly reserved by the author of the trust (in cases of trusts declared orally or by non-testamentary instruments) or
- (c) Where the trust is created for the payment of debts of the author of the trust, and has not been communicated to the creditors, at the pleasure of the author of the trust.

**Illustration** (as given in the Indian Trust Act, 1882)

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

**Question 33] Suresh conveys property to Bhushan in trust to sell the same and pay out of the proceeds the claims of his creditors. Suresh reserves no power of revocation and also does not communicate to the creditors about the creation of the trust.**

- (a) Can Suresh revoke the trust?
- (b) What will be the position if the creditors are parties of the agreement?

CS (Inter) – June 2002 (5 Marks), Dec 2002 (5 Marks),

CS (Inter) – Jun 2003 (5 Marks)

**Ans.: As per Section 78,** a trust is generally irrevocable unless a power of revocation is expressly reserved. Further it is also provided that where the trust is created for the payment of debts of the author of the trust, and has not been communicated to the creditors, then such trust can be revoked at the pleasure of the author of the trust. However, if communication is made to creditor then such creditor becomes interested party and trust becomes irrevocable trust.

Thus, Suresh can revoke the trust *only if* no communication is made to creditor and power of revocation is expressly reserved.

# 19

## C H A P T E R

# REGISTRATION ACT, 1908

**INTRODUCTION :** *The main purpose of registration of documents is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property and to perpetuate documents which may afterwards be of legal importance, and also to prevent fraud. Registration ensures and safeguards the interest of an intending purchaser.*

*Thus, the Registration Act, 1908 was designed to ensure that correct land records could be maintained. The Act is also used for proper recording of transactions relating to other immovable property. The Act provides for registration of other documents also, which can give these documents more authenticity. Registering authorities have been provided in all the districts for this purpose. The Registration Act, 1908 extends to the whole of India except the State of Jammu and Kashmir. It came in force on 1st January, 1909.*

### REGISTRABLE DOCUMENTS

**Question 1]** State the documents of which registration is compulsory under the Registration Act, 1908.

CS (Executive) - June 2010 (4 Marks), Dec 2011 (4 Marks)

CS (Executive) - Dec 2014 (5 Marks)

**Ans.:** Documents of which registration is compulsory [Section 17(1)]: The following documents *shall* be registered namely:

- (a) Instruments of gift of immovable property
- (b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property
- (c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest
- (d) Leases of immovable property from *year to year*, or for any term *exceeding one year*, or *reserving a yearly rent*
- (e) Non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of ₹ 100 and upwards, to or in immovable property:

Provided that the State Government may by order published in the official gazette exempt from registration any leases, the terms granted by which **do not exceed 5 years** and the annual rent reserved by which do not exceed ₹ 50.

**What is a non-testamentary document?**

A testamentary document is a Last Will and testament or some other document that meets the statutory requirements of a Will. Non-testamentary documents would be documents that are not related to a Last Will and testament.

It was held by the Privy Council, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective and if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with. [*Kalyan Sundaram Pillai vs. Karuppa Mopanar*, AIR 1927 PC 42]

Delay in registration of a gift does not postpone its operation. Section 123, Transfer of Property Act, 1882 merely requires that donor should have signed the deed of gift. Hence a gift deed can be registered even if the donor does not agree to its registration. [*Kalyan Sundaram Pillai vs. Karuppa Mopanar*, AIR 1927 PC 42]; [*Venkata Rama Reddy v. Pillai Rama Reddy* AIR 1923 Mad. 282]

**Question 2] State the documents of which registration is not compulsory under the Registration Act, 1908?**

CS (Inter) - Dec 2004 (5 Marks), June 2008 (4 Marks)

**Ans.: Documents not requiring registration [Section 17(2)]:** Section 17(1)(b) & (c) provides that the non-testamentary documents therein must be registered but subject to the exceptions as provided under Section 17(2). These are as follows:

- (a) Any composition deed i.e. every deed the essence of which is composition or
- (b) Any instrument relating to share in joint stock company or
- (c) Any debenture issued by any company or
- (d) Any endorsement upon or transfer of any debenture or
- (e) Any document other than document specified in Section 17(1A) creating merely a right to obtain another document which will, when executed create declare, assign, limit or extinguish any such right, title or interest or
- (f) Any decree or order of a Court or
- (g) Any grant of immovable property by the Government.
- (h) Any instrument of partition made by Revenue-officer or
- (i) Any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883 or
- (j) Any order granting loan made under the Agriculturists Loans Act, 1884 or instrument for securing the repayment of a loan made under that Act or
- (k) Any order made under the Charitable Endowments Act, vesting any property in a Treasurer of a charitable endowments or diverting any such Treasurer of any property or
- (l) Any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money, due under a mortgage when the receipt does not purport to extinguish the mortgage or
- (m) Any certificate of sale granted to the purchaser of any property sold by public auction by Civil or Revenue Officer.

**Question 3] Enumerate the documents, registration of which is optional under the provisions of the Registration Act, 1908.**

CS (Inter) - Dec 2003 (4 Marks), June 2004 (4 Marks)

CS (Executive) - June 2009 (4 Marks), June 2011 (4 Marks)

CS (Executive) - Dec 2015 (4 Marks)

**Ans.: Documents of which registration is optional [Section 18]:** Any of the following documents *may* be registered, namely:

- (i) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;
- (ii) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- (iii) Leases of immovable property for any term not exceeding one year, and leases exempted u/s 17;
- (iv) Instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;
- (v) Instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;
- (vi) Wills; and
- (vii) All other documents not required by Section 17 to be registered.

**Question 4] State whether the following are compulsorily registrable or not under the Registration Act, 1908;**

- (1) Lease agreement for tenancy of a residential flat for one year only.
- (2) Lease agreement for one year containing an option to the tenant to renew it for a further period of one year or any other term.
- (3) Lease agreement exceeding one year.
- (4) Lease agreement from year to year.
- (5) Lease agreement for one year with an annual reserved rent.
- (6) Will.

CS (Final) - June 1998 (6 Marks)

**Ans.:**

- (1) Registration of document relating to lease agreement for tenancy of a residential flat for one year is not compulsory.
- (2) Not compulsory as it is not a lease for a term exceeding one year.
- (3) Compulsorily registrable however small the rent may be.
- (4) Compulsorily registrable irrespective of the rental value.
- (5) Registration of lease agreement for one year with an annual reserve rent is not compulsory.  
A lease of one year or reserving a yearly rent can be made only by a registered instrument. But where the lease is only for one year with a reserved rent for the period for which it has been granted, viz. one year, it does not require registration.
- (6) Registration of will is optional.

**Question 5] By an agreement, Anamika transferred to Bipasha a decree of a Court by which she was entitled to possess 500 bighas of land. Is it necessary to register such a transfer under the Registration Act, 1908?**

CS (Inter) - June 2006 (5 Marks)

**Ans.:** The documents of which registration is compulsory are enumerated in Section 17. As per Section 17(1)(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award to create interests are required to be compulsorily registered.

Hence, transfer of decree of a Court by Anamika to Bipasha will have to be compulsorily registered.

**Question 6] State whether the registration of a gift against donor's wishes during his life time or after his life time or after his death is effective.**

CS (Final) – June 1997 (6 Marks)

**Whether a donor can revoke the gift on the ground that the gift is not complete until the deed is register?**

**Ans.:** It was held by the Privy Council in *Kalyana Sundram v. Karuppa*, AIR 1927 PC 42, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective and if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with.

**Question 7] Amrit executed a gift deed in his life time in favour of Bhanu. The gift deed was not registered during the life time of Amrit. Bhanu, after death of Amrit, presented the gift deed before the Registrar for its registration. Rakshit, brother of Amrit raised an objection for the registration of gift deed on the ground of fake signatures of Amrit. But the witnesses to the gift deed contended that the signatures were made before them by the donor at the time of execution of gift deed. Whether the gift deed will be treated valid for registration under the Registration Act, 1908?**

CS (Inter) – June 2005 (5 Marks)

CS (Inter) – Dec 2006 (5 Marks)

**Ans.:** In the case the donor dies before registration of a document, the document may be presented for registration after his death and if registered will have the same effect as it was registered in his life time.

It was held by the Privy Council in *Kalyana Sundram v. Karuppa*, AIR 1927 PC 42, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective and if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with.

**Question 8] Tom has donated a piece of immovable property to his major son Wise. Before the instrument could be registered, Tom died. By virtue of the will in favour of Mrs. Tom, she desires to revoke the gift to Wise, as the instrument is still not registered under the Registration Act, 1908? Will Wise succeed in retaining the gift received from Tom?**

CS (Final) – June 2002 (6 Marks)

**Ans.:** In the case the donor dies before registration of a document, the document may be presented for registration after his death and if registered will have the same effect as it was registered in his life time.

It was held by the Privy Council in *Kalyana Sundram v. Karuppa*, AIR 1927 PC 42, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective and if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with. Hence, Wise will succeed in retaining the gift.

**TIME OF PRESENTATION**

**Question 9]** What is the time limit for registration of documents?

CS (Inter) – June 2004 (2 Marks)

What are the provisions relating to registration of documents executed out of India?

CS (Final) – June 2001 (3 Marks)

CS (Inter) – June 2004 (2 Marks)

**Ans.:** Provisions relating to time limit for registration of documents are as follows:

- (1) **Time for presenting documents [Section 23]:** Document other than a will shall be accepted for registration within **4 months** from the **date of its execution**.

A copy of a decree or order may be presented within 4 months from the date on which the decree or order was made. If such decree or order is appealable then it can be presented for registration within 4 months from the day on which it becomes final.

- (2) **Documents executed by several persons at different times [Section 24]:** Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within 4 months from the date of each execution.

- (3) **Provision where delay in presentation is unavoidable [Section 25]:** If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, *in India* is not presented for registration within 4 months, the Registrar may register the documents in next 4 months on payment of a fine **not exceeding 10 times** the amount of the proper registration-fee.

- (4) **Documents executed out of India [Section 26]:** When a document have been executed out of India is not presented for registration within 4 months from the date of execution then registering officer may register within 4 months after its arrival in India on payment of the proper registration fee.

A document executed outside India is not valid unless it is registered in India. [*Nainsukhdas v. Gowardhandas*, AIR 1948 Nag. 110]

- (5) **Section 27** deals with presentation of will. Wills can be presented for registration at any time.

**Question 10]** A document executed on 2nd January 2015 was presented for registration under the Registration Act, 1908 on 31st August 2015. The registering authorities refused to accept the document for registering on the ground that it was time-barred Decide.

CS (Final) – Dec 2001 (2 Marks)

**Ans.:** **Section 24** provides a time limit of 4 months for registration of documents. **Section 25** provides a further period of 4 months in cases of urgent necessity and unavoidable accident on payment of a fine up to 10 time of normal fee. Thus, a maximum period for presenting a document for registration is 8 months under Section 23 read with Section 25. Therefore, in the instant case, if the grounds provided under Section 25 are pressed and accepted, the Registering Authorities cannot refuse to accept the document for registration.

**Question 11]** Ankur has made a gift of a house to Bhaskar. Ankur has signed on the gift deed and handed over the possession of the house to Bhaskar. Ankur did not want gift deed to be registered. After sometime, Ankur dies. There was a long delay in the registration of the gift deed. Whether the period of delay may be condoned by the Registrar for the registration of gift deed even after the death of the donor under the Registration Act, 1908.

CS (Inter) – Dec 2007 (5 Marks)

**Ans.:** In the case the donor dies before registration of a document, the document may be presented for registration after his death and if registered will have the same effect as it was registered in his life time.

As per **Section 23**, document other than a will shall be accepted for registration within **4 months** from the **date of its execution**. **Section 25** provides a further period of 4 months in cases of urgent necessity