

# Commercial Law



**Notes**

# Commercial Law

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## CHAPTER-1

# Some Important Short Questions

### Q.1 Define Contract.

**Ans.:** "An agreement enforceable by Law is a Contract." (Section 2(h))

### Q.2 What is implied contract?

**Ans.:** An agreement which is not made by written or spoken words of parties but it is evidenced from the acts or conduct of the parties or according to prevailing conditions.

### Q.3 What is quasi contract?

**Ans.:** The contract which is not created by proposal and acceptance but imposed by law based on the principle of equity.

### Q.4 Distinguish between void and voidable contract.

**Ans.:** A void contract is ab-initio void hence, cannot be enforced by law on the other hand enforceability of a voidable contract, depends upon the will of the aggrieved party.

### Q.5 What is the difference between void Agreement and Void contract?

**Ans.:** Void agreement is void from beginning (ab-initio) whereas void contract becomes void when aggrieved party chooses to rescind it.

### Q.6 What is general and standing offer?

**Ans.:** The offer made to the public in general and any one can receive, it is general offer, whereas standing offer is an offer made as tender to supply goods as and when required amounts to a standing offer.

### Q.7 What is cross offer and counter offer?

**Ans.:** When two parties exchange identical offers in ignorance at the time of each other's offer, it is called cross offer, on the other hand when offeree offers variations in the original offer, it is called as counter offer.

### Q.8 What is executed and executory contract?

**Ans.:** A contract in which all the parties to the contract have performed their respective obligation is known as executed contract, whereas Executory contracts is one in which all or something still remain to be fulfilled or performed by the parties.

**Q.9 What is Bilateral and Unilateral contract?**

**Ans.:** Bilateral contract is one in which both the parties exchange a promise to each other, which is to be performed in future, but still outstanding hence, it is called bilateral contract and similar to executory contract. On the other hand, Unilateral contract is one in it a promisor promises to do something. In such a contract, promisor binds himself to perform his promise but the offerer does not do so. Therefore, it is called Unilateral Contract.

**Q.10 Explain capacity to contract.**

**Ans.:** The term capacity to contract means competence to legally enter into a contract that is legally binding to the parties.

**Q.11 Who is a Minor?**

**Ans.:** A minor is a person who has not completed eighteen years of age. Who has not completed the age of 21 years in case the court has appointed guardian or superintendence of court of wards of minor's property.

**Q.12 What is Consent?**

**Ans.:** According to Section 13 "Two or more persons are said to consent when they agree upon the same thing in the same sense." It is Unison or meeting of mind or consensus ad idem.

**Q.13 What is Coercion?**

**Ans.:** According to Section 15 of Indian Contract Act, 1872, "Committing any act forbidden by Indian Penal Code or detaining or threatening to detain property of another for getting consent is coercion."

**Q.14 Explain undue influence.**

**Ans.:** When a dominating party misuses his influence to dominate the will of the weaker party to get undue or unfair advantage in a contract, then it is called undue influence (Section 16).

**Q.15 What do you mean by fraud?**

**Ans.:** According to Section 17, "The term fraud is the intentional misrepresentation or concealment of material facts of an agreement by a party to or by his agent with an intention to deceive and induce the other party to enter into an agreement

**Q.16 What do you mean by misrepresentation?**

**Ans.:** It is defined under section 18. It means any innocent or without intentional false statement

or positive assertion of fact made by one party to the other during the course of negotiation of a contract is known as misrepresentation.

**Q.17 What is mistake?**

**Ans.:** It is defined under Section 20 to 22, "It is an erroneous belief about something. When the consent of one or both the parties to a contract is caused by misconception or erroneous belief, the contract is said to be induced by mistake. It is mistake of law and mistake of fact. The mistake of Indian Law is enforceable, not void but mistake of foreign law is void. When mistake made by a person it is unilateral mistake and mistake is made by both the parties, it is bilateral mistake.

**Q.18 What is consideration.**

**Ans.:** It is quid-pro-quo means something in return. Hence, consideration is the price paid by promise for the obligation of the promise.

**Q.19 What is doctrine of privity of contract?**

**Ans.:** A person who is not a party to the contract cannot sue upon it. Only the party to the contract can enforce the same.

**Q.20 What is Ex-Nudo-Pacto Nor-Oritur actio mean?**

**Ans.:** It means from bare promise, no right of action can arise.

**Q.21 What is maintenance?**

**Ans.:** It is simply meaning the promotion of litigation in which one had no interest.

**Q.22 What is Champerty?**

**Ans.:** It is a bargain where by one party agrees to assist the other in recovering property.

**Q.23 What is wagering Agreement?**

**Ans.:** It is an agreement involving payment of a sum of money upon the determination of an uncertain event.

**Q.24 What do you mean by Agreement against public policy?**

**Ans.:** It simply mean whenever an agreement is harmful or injurious to public interest and welfare it is said to be against public policy. It is harmful to the social, political, economic and other interest and welfare of the public is called agreement opposed to public policy.

**Q.25 What is Contingent contract?**

**Ans.:** It is a contract in which the promisor undertakes to perform the contract upon the happening or non happening of a specified future uncertain event, which is collateral to the contract (Section 32).

**Q.26 What is Appropriation of payments?**

**Ans.:** In case of a debtor owes several distinct debts to the same creditor, he makes payment which is insufficient to satisfy all the debts. In such a situation a question arises as to which particular debt the payment is to be appropriated.

**Q.27 What is Novation?**

**Ans.:** Novation means substitution of a new contract in place of an existing one with the consent of all the parties to the contract.

**Q.28 What is Rescission?**

**Ans.:** It is cancellation of a contract by the consent of all the parties to it or by the aggrieved party to it.

**Q.29 Explain Remission.**

**Ans.:** According to Section 63, "Remission meant acceptance of a lesser performance in discharge of a whole obligation under a contract.

**Q.30 What is Waiver?**

**Ans.:** When a party entitled to claim performance releases the other party from his obligation it is known as waiver.

**Q.31 What is supervening impossibility?**

**Ans.:** If after making agreement it becomes impossible to fulfill the promise under contract, it is supervening impossibility. The contract becomes void.

**Q.32 What is liquidated damages?**

**Ans.:** When the sum payable in the event of breach is decided by parties in advance, it is called liquidated damages.

**Q.33 What are exemplary damages? When they are awarded?**

**Ans.:** The damages which are awarded with a view to punish the defendant. These are awards in two cases i) On breach of contract of marriage and 2) wrongful dishonour of customer's cheque by the bank.

**Q.34 What is the contract of Indemnity?**

**Ans.:** A contract of indemnity means a contract by which one person promises to save the other from the loss caused to him by conduct or incident.

**Q.35 What is contract of guarantee?**

**Ans.:** According to Section 126 of contract Act "A contract of guarantee as a contract to perform the promisor discharge the liability of a third person in case of his default.

**Q.36 What is bailment?**

**Ans.:** According to 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 direction of the person delivering them.

**Q.37 What is Lien? What are its types?**

**Ans.:** Lien is a right to retain that which is in possession of a person and belongs to another until his demands are satisfied. There are two types of lien 1) The general lien which means to retain any property belonging to the other for any lawful payment and 2) It is relating to retain those goods, which are the subject matter of contract of particular lien.

**Q.38 What is agency?**

**Ans.:** The relationship between agent and principal created by an agreement whereby agent is authorized by his principal to represent him and establish contractual relations with third party.

**Q.39 What is Agency by estoppel?**

**Ans.:** If a person either by his conduct or words leads to another person to believe that a certain person is his agent, is called agency by estoppel.

**Q.40 What is agency by ratification?**

**Ans.:** If the principal ratifies the act of a person done without authority, it is known as 'agency by ratification'.

**Q.41 What is sub-agent and substituted Agent?**

**Ans.:** A sub agent is a person employed by and acting under the control of the original agent in

the business of the agency (Section 191) on the other hand, a substituted agent is named by agent but appointed by the principal. He is liable to principal.

**Q.42 What is contract of Sale. How it is different from Agreement to sell?**

**Ans.:** A contract where seller transfers or agrees to transfer property, in goods to the buyer for a price on the other hand, a contract where seller agrees to transfer property in goods in future on fulfillment of certain conditions is called as agreement to sell.

**Q.43 How sale is different from Bailment?**

**Ans.:** The intention of parties in case of sale is to transfer property in goods immediately, but in case of bailment, the property in goods is not transferred.

**Q.44 What is goods under sale of goods Act, 1930 and its types?**

**Ans.:** According to Section 2(7) "Goods means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

According to Section 6 (1 and 2) of the act there are three types of goods as :

- (1) Existing goods viz - Specific, ascertained or unascertained goods
- (2) Future goods and
- (3) Contingent goods

**Q.45 What is condition and warranty?**

**Ans.:** According to Section 12(2), a condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated, whereas warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives right to claim for damages but not to a right to reject the goods and treat the contract as repudiated (Section 12(3)).

**Q.46 What is doctrine of Caveat Emptor?**

**Ans.:** The buyer must take care when buying goods; it is not seller's duty to point out the defects in goods.

**Q.47 What is the meaning of Res Prit Domine?**

**Ans.:** It simply means risks follows ownership. It is general rule that risk prima facie passes with ownership.

**Q.48 What is the meaning of Nemo dot quod non habit.?**

**Ans.:** It means nobody can give what he himself has not or no seller can transfer a better title than he himself has.

**Q.49 What is unpaid seller?**

**Ans.:** According to Section 45 (1) the seller of goods deemed to be unpaid seller when whole price has not been paid or negotiable instrument received as payment dishonoured.

**Q.50 What are the rights of unpaid seller?**

**Ans.:** He has two rights :

- (1) Right against the goods i.e. right of lien, right of stoppage of goods in transit and right of resale.
- (2) Rights against buyer personally i.e. a) suit for price, b) damages for non acceptance, repudiation of the contract before the due date and suit for interest.

**Q.51 What is retracting the bid?**

**Ans.:** The term retracting means withdraw or revoke. A bidder may retract his bid at any time before the compilation of sale. Any condition in an auction sale which forbids the bidder to retract his bid is void.

**Q.52 What is damping?**

**Ans.:** Damping is an overt act of dissuade the prospective buyer from raising the price by pointing out defects in the goods, creating confusion in the mind of intending bidder and taking away him from the place of auction.

**Q.53 When knock out agreement becomes illegal?**

**Ans.:** In the intention of the partner to knock out is to defraud a third party; such agreement is illegal.

**Q.54 What is the cardinal principle of partnership?**

**Ans.:** It is based on the principle that business must be carried on by all or any of them acting for all.

**Q.55 Who is ostensible partner?**

**Ans.:** Who is active partner who invested money into the firm actively participates in the functioning and management of the firm and shares profits.

**Q.56 Who is holding out partner?**

**Ans.:** If the person through his conduct and behavior representing himself as a partner, without being partner in the firm is called holding out partner.

**Q.57 What is the difference between dissolution of firm and dissolution of partnership.**

**Ans.:** The dissolution of partnership between all the partners of a firm is termed as dissolution of the firm contrary to its extinction of relationship between some of the partners only, it is called dissolution of partnership.

**Q.58 Who is a consumer under consumer protection Act, 1986?**

**Ans.:** Consumer is a person who buys goods or services for consideration which has been paid as promised or partly paid and partly promised or under any systems of deferred payment.

**Q.59 What is Consumer Dispute?**

**Ans.:** It refers to a dispute where the person against whom a complaint had been made, denies or disputes the allegations contained in the complaint.

**Q.60 What is unfair trade practice under consumer protection Act?**

**Ans.:** It means a practice which, for the purpose of promoting the sale, use or supply of any goods or for any goods or for the provision of any service adopts any unfair method or defective practices.

**Q.61 How many consumer protection councils are there under the Act?**

**Ans.:** There are two types of these councils -

- (i) The Central Consumer Protection Council and
- (ii) The State Consumer Protection Council.

□ □ □

## **Meaning and Essentials of Contract**

**Q.1. "An agreement enforceable by law is a contract" Comment and explain the essentials of a valid contract in brief.**

**Ans.:** Generally, contract means a promise or agreement made by two or more persons enforceable by law. According to Indian Contract Act 1872 Section 2(h) defined.

"An agreement enforceable by law is a contract." Hence, agreement and legal

## CHAPTER-3

enforceability creates an agreement as contract. Section 10 defines "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 hereby expressly declared void. The contract to be made in writing by law of land or in the presence of witnesses or be registered, if required"

On the basis of the above definitions and judgment given by judges, help us to mention the following essentials of a valid contract :

- (1) Atleast two parties are required to enter into a contract that is promisor and promisee.
- (2) **Agreement** : Proposal and acceptance must be absolute and unconditional. The two identical Cross-offers and successive counter offer are only offer and not agreement.
- (3) The intention should be to create legal relations not the social, domestic, political relations.
- (4) Contractual capacity among persons who is not minor, insane and disqualified by law of the land.
- (5) Consent or Consensus ad idem. The parties are said to consent when they agree upon the same thing in the same sense. (Section13).
- (6) **Free Consent** : According to Section14, the consent is said to be free when it is not caused by i) coercion, or ii) undue influence, or iii) fraud, or iv) misrepresentation or v) mistake.
- (7) **Consideration** : Except some exceptions, an agreement without consideration is void. It means quid pro-quo. It must be lawful and real and not illusory.
- (8) The lawful object and its consideration must be legal.
- (9) The agreement must have certain meaning.
- (10) An agreement to be valid must be possible to be performed.
- (11) The agreements must not be declared void by the law of the land.
- (12) Compliance of legal formalities is required.

Hence, every agreement to be enforceable by law must possess all these essential elements for a contract. If any of the element is missing in an agreement, such agreement is not enforceable by law.

# Proposal and Acceptance

## CHAPTER-3

### Q.1. Define offer and acceptance. Explain rules regarding valid acceptance.

**Ans.:** The term offer is also called proposal. It is defined under Indian Contract Act, 1872 Section 2(a), "when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

Acceptance is defined under section 2(b) of Contract Act, 1872 i.e. when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

**Rules regarding Valid Acceptance :** A few important rules of acceptance are as follows in brief :

- (1) Acceptance must be absolute and unqualified {Section 7(1)}.
- (2) It must be in prescribed manner/reasonable manner {Section 7(2)}.
- (3) Acceptance may be given by performance of condition or act required by an offeror {(Section8)}.
- (4) It may be given by acceptance of consideration (Section 8).
- (5) Acceptance may be express or implied.
- (6) It must be given within specified or reasonable period of time.
- (7) Acceptance must be given while the offer is in force.
- (8) It must be given only after the communication of offer is complete.
- (9) Acceptance must be given by the person to whom offer is made.
- (10) Acceptance must be communicated, only mental determination or intention to give acceptance is not sufficient.
- (11) It must be from competent person/authorized person otherwise it will not be binding. **Powell V. Lee (1908)**
- (12) It should be communicated to the offeror himself, other than him will not create legal obligation.
- (13) Acceptance subject to contract is no acceptance. It will not create legal binding.

### Note

- (i) A rejected offer cannot be accepted.
- (ii) Counter offer does not constitute acceptance.
- (iii) Cross offer cannot be assumed as acceptance.
- (iv) Silence does not generally amount to acceptance.
- (v) Acceptance to offer means acceptance of all terms of offer.
- (vi) Sometimes grumbling acceptance is a valid acceptance.
- (vii) Enquiring/seeking clarification of offer is not to be assumed as acceptance.
  
- (viii) Circumstances of the acceptance must show the ability and willingness to fulfill the terms of offer.

□ □ □

## Capacity to Contract

### Q.1. Who can make a valid contract? Discuss the validity of agreements made by a minor.

**Ans.:** According to Section 11, "Every person is competent to contract who is of the age of majority according to law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject." Hence, the following persons can make valid contract :

- (i) Who is major
- (ii) Who is of sound mind or sane
- (iii) Who is not disqualified from contracting by any law of the land to which he is subject.

#### Validity of Agreement made by a Minor :

- (i) Agreements with or by a minor is absolutely void. Ruling was given in Mohri Bibee vs. Dharmodas Ghose.
- (ii) No ratification of minor's contract.
- (iii) A minor can be a promisee or beneficiary.
- (iv) Restitution/compensation is possible in case of minor under (section 33, specific Relief Act, 1963).
  - (v) The rule of estoppel does not apply for minor, he can plead his minority.
- (vi) No specific performance is possible in case of minor because contract made by him is void {(Mirsarwarjan vs. Fakhruddin 1912) 3 Col. 232}

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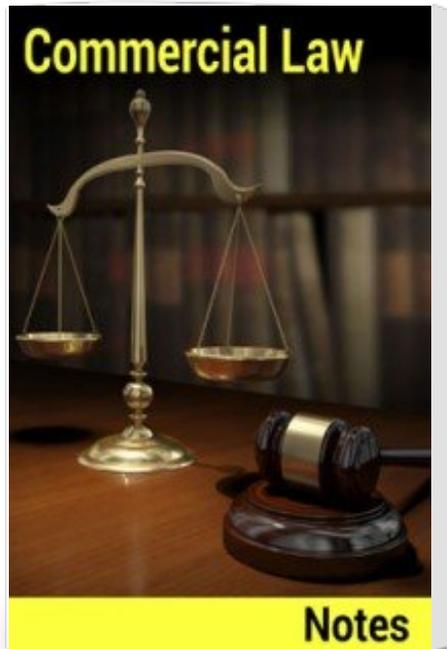
- (vii) Contract by parents/guardian/manager may be made on behalf of the minor, provided they had authority and benefit to minor
- (viii) Minor may be given share in existing partnership business by the consensus of the partners.
- (ix) Minor may be appointed as Agent but principal will be personally liable for his acts.
- (x) Acts done by minor is parents will not be liable.
- (xi) Guarantee for and by the minor is valid.
- (xii) Insolvency Act does not apply on minor; hence, minor cannot be adjudicated insolvent.
- (xiii) Minor may be joint promisor under Law of contract.
- (xiv) Minor cannot apply for allotment of shares in company, but he can apply for fully paid up share on behalf of his guardian.
- (xv) Minor is allowed to make, draw and endorse negotiable instrument but he is not liable for dishonour.
- (xvi) Minor cannot enter into service agreement but he can be beneficiary if he has performed his promise.
- (xvii) Minor can enter into the contract of Apprenticeship at the age of 14 years if he is physically fit.
- (xviii) Minor can become trade union member if he has attained the age of 15 years.
- (xix) Marriage contract of minor on behalf of parents is allowed on the ground of the customs of the community.
- (xx) Minor is held responsible for torts or civil wrong committed by him
- (xxi) Liability of necessities of life supplied to him or his legal dependents. His property is liable; he is personally not liable.

□ □ □

## Free Consent

**Q.1. Define Free consent? When does consent become free? Explain rules regarding free consent.**

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