



Ist Internal, 2019
BBA 1ST Year
LEGAL ASPECTS OF INDIAN BUSINESS
Set A

Max. Marks 40
Time 1.30 Hrs.

Multiply Choice Questions

[1*10=10]

1. The Law of Contract is nothing but

a) A child of commercial dealing b) A child of religion c) A child of day to day politics d) A child of economics

2. An agreement is

a) Enforceable by law if it meets the requirements of the law of the land b) Enforceable by law if any one party want it c) Enforceable against the law **d) Enforceable by law if it is made by competent parties**

3. Every promise and every set of promise forming the consideration for each other is a/an

a) Contract b) Agreement **c) Offer** d) Acceptance

4. A promises to deliver his watch to B and, in return, B promises to pay a sum of Rs 2,000. This is a/an

a) Agreement b) Proposal c) Acceptance d) Offer

5. Contract is defined as agreement enforceable by law, vide Section..... of the Indian Contract Act.

a) 2(e) b) 2(f) c) **2(h)** d) 2(i)

6. An agreement to commit a tort is

a) Void b) Voidable c) Valid **d) Unenforceable**

7. Agreement to murder a person

a) Cannot be enforceable by law b) Is valid in law c) In invalid for want of consideration d) Has no consensus ad idem .

8. Agreements that do not give rise to contractual obligations are not contracts.

a) True b) Partly True c) False d) None of the above

9. A contract creates

a) **Rights and obligations of the parties to it** b) Obligations of the parties to it c) Mutual understanding between the parties to it d) Mutual lawful rights and obligations of the parties to it.

10. A invites B for coffee in coffee-day restaurant and B accepts the invitation. On the appointed date, B goes there but A is not found. In this case

a) **B has no remedy against A** b) B has to wait for another invitation from A c) B has the right to sue A for not honoring his words d) A has to invite B again, to perform the promise.

Attempt any three questions:

Q1. "All contracts are agreement but all agreements are not contract" Explain with examples. **[10]**

Q2. What do you understand by guarantee? Distinguish between indemnity and guarantee contract. **[10]**

Q3. Who can make a valid contract? Discuss the validity of agreement made by minor. **[10]**

Solution

1. **A contract** is a legally binding agreement or relationship that exists between two or more parties to do or abstain from performing certain acts. There must be offer and acceptance for a contract to be formed. An offer must be backed by acceptance of which there must be consideration. Both parties involved must intend to create legal relation on a lawful matter which must be entered into freely and should be possible to perform.

An agreement enforceable by law is a contract.”
A contract therefore, is an agreement which creates a legal obligation i.e., a duty enforceable by law. From the above definition, we find that a contract essentially consists (1) An agreement and (2) Legal obligation i.e., a duty enforceable by law.

Example;

A promises to sell a horse to B for Rs.100,000, and B promises to buy horse at that price.

For a Contract to be there an agreement is essential; without an agreement, there can be no contract. As the saying goes, “where there is smoke, there is fire; for without fire, there can be no smoke”. It could will be said, “where there is contract, there is agreement without an agreement there can be no contract”. Just as a fire gives birth to smoke, in the same way, an agreement gives birth to a contract.

What is agreement?

An agreement is a form of cross reference between different parties, which may be written, oral and lies upon the honor of the parties for its fulfillment rather than being in any way enforceable.

Every promise and every set of promises, forming the consideration for each other, is an agreement.” Thus it is clear from this definition that a ‘promise’ is an agreement.

Promise: the answer to this question is contained in section 2 (b) which defines the term.” 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.” An agreement, therefore, comes into existence only when one party makes a proposal or offer to the other party and that other party signifies his assent thereto. **acts** As stated above, an agreement to become a contract must give rise to a legal obligation. If an agreement is incapable of creating a duty enforceable by law. It is not a contract. Thus an agreement is a wider term than a contract. Agreements of moral, religious or social nature e.g., a promise to lunch together at a friend’s house or to take a walk together are not contracts because they are not likely to create a duty enforceable by law for the simple reason that the parties never intended that they should be attended by legal consequences. On the other hand, legal agreements are contracts because they create legal relations between the parties.

EXAMPLE: a- A invites B to dinner. B accepts this invitation but does not attend the dinner. A can not sue B for damages. It is social agreement because it does not create legal obligation. So it is not a contract.

b- A promises to sell his car to B for one million. It is legal agreement because it creates legal obligations between the parties. So it is a contract. According to section 10 of the contract act 1872, “All agreements are contracts if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and not hereby declared to be void.” Thus an agreement becomes a contract when at least the following conditions are satisfied.

Conclusion:

In a nut shell, an agreement is the basis of a contract and contract is the structure constructed on these basis. An agreement starts from an offer and ends on consideration while a contract has to achieve an other milestone that is enforceability. Due to this, breach of an agreement does not give rise to any legal remedy to the aggrieved party while breach of contract provides legal remedy to the aggrieved party against the guilty party. Thus we can say that all contracts are agreements but all agreements are not contracts.

2. Indemnity and Guarantee are a type of contingent contracts, which are governed by Contract Law. Simply put, indemnity implies protection against loss, in terms of money to be paid for loss. **Indemnity** is when one party promises to compensate the loss occurred to the other party, due to the act of the promisor or any other party. On the other hand, the **guarantee** is when a person assures the other party that he/she will perform the promise or fulfill the obligation of the third party, in case he/she default.

Comparison Chart

BASIS FOR COMPARISON	INDEMNITY	GUARANTEE
Meaning	A contract in which one party promises to another that he will compensate him for any loss suffered by him by the act of the promisor or the third party.	A contract in which a party promises to another party that he will perform the contract or compensate the loss, in case of the default of a their person, it is the contract of guarantee.
Defined in	Section 124 of Indian Contract Act, 1872	Section 126 of Indian Contract Act, 1872
Parties	Two, i.e. indemnifier and indemnified	Three, i.e. creditor, principal debtor and surety
Number of Contracts	One	Three
Degree of liability of the promisor	Primary	Secondary
Purpose	To compensate for the loss	To give assurance to the promisee

BASIS FOR COMPARISON	INDEMNITY	GUARANTEE
Maturity of Liability	When the contingency occurs.	Liability already exists.

3. One of the essential ingredient of a valid contract stated in Section 10 is that the parties making the agreement must be competent to contract. Any one cannot enter into a contract, he must be competent to contract according to the law.

Section 11 provides that every person is competent to contract who is of the age of majority according to the 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. In simple words, a person who is of the age of majority, of sound mind and is not disqualified by law from contracting is competent to contract. Age of Majority. Section 3 of the Indian Majority Act declares every person to be of the age of majority who has completed 18 years of age. However, where a guardian has been appointed to a minor or his property, he attains majority at the age of 21.

Sound Mind : Section 12 of the Indian Contract Act defines the term ‘Sound Mind’ as follows : ‘A person is said to be of sound mind for the purpose of Making a contract if, at the time when he makes it, he is capable of understanding it and forming a rational judgment as to its effects upon his interest. So, a person of sound mind is one who fulfills two conditions:

1. He should be capable of understanding the contract,
2. He should be capable of forming a rational judgment about the effects of the contract on his interest.

If a person does not satisfy both these conditions, he is person of unsound mind. A person, who is usually or occasionally of unsound mind, may make a contract only When he is of sound mind. A lunatic can, therefore, make a contract only during lucid interval, i.e., when of sound mind.

Disqualified by law to make a contract: The following persons are disqualified by law to contract

1. Alien enemy An alien is a person who is the citizen of a foreign country. Alien enemy is the citizen of a country at war with India.
2. A convict during the period he undergoes his punishment.

3. An insolvent during the insolvency period expecting certain transactions or with the leave of the court.

Contracts with Minor : A minor is a person who has not attained the age of majority as defined in the preceding paragraphs. Section 11 declares a minor incompetent of contracting, a contract with or by a minor shall be void and unenforceable. This fact is accepted in many legal decisions. The case of Ram vs. shyam represents a best example on the issue. In this case, a minor mortgaged his house in favor of a moneylender to secure a loan of Rs. 20,000 and received Rs. 8,000 from the mortgagee. The mortgagee filed a suit for the recovery of his mortgage money and for sale of property in case of default. The Privy Council held that an agreement by a minor was absolutely void as against him and therefore the mortgagee could not recover the mortgage money.

Minor's Agreements: The law relating to minor's agreements and effects thereof can be summed up as under,

1. An agreement with a minor is void : An agreement with a minor is void from the very beginning and void absolutely. In other words, an agreement with a minor does not create any legal rights and obligation between the concerned parties.

2. The rules of estoppel does not apply to a minor : A minor is not bound by his misrepresentations. But if a minor enters into a contract by fraudulently representing himself to be a major, he cannot be prevented from pleading minority as defence. The rule of estoppel cannot be applied against the minor.

3. A minor's agreement cannot be ratified by minor on his attaining Majority : Ratification implies approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. This is because ratification relates back to the date of making of the contract and therefore a contract which was void from the very beginning can not be made valid by subsequent ratification.

4. Minor's liability in tort : The term 'tort' implies a civil wrong for which a suit can be filed by the affected party. If a minor enters into an agreement by misrepresenting his age, he cannot be sued either for damages for breach or in the form of damages for tort (i.e., deceit) because this would be indirectly enforcing the agreement which is void. However, if wrongful act (i.e., tort) of minor is independent of the contract,

then minor is liable for damages in tort. In the case of *Burnard vs Haggis*, A, a minor borrowed a mare from B for riding only under instructions not to jump it. He lent the horse to his friend who jumped and killed her. He was held liable for tort.

5. Beneficial contracts : A minor can be a beneficiary or promisee. In other words, if a contract is beneficial to a minor, it can be enforced by him. In *Raghava Chariar vs. Srinivasa*, A executed a mortgage in favor of B (a minor) who advanced a certain sum of money to A. The court in this case held that the mortgage is enforceable by minor as the transaction was for his benefit.

6. Minor's liability for necessities : Section 68 of the Indian Contract Act, provides that 'if a person incapable of entering into a contract or anyone whom he is legally bound to support is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person'. So if a minor or his dependents are supplied necessities by someone, minor's property is liable.

7. Position of minor's parents or guardian : Minor's contract do not impose any liability on his parents or guardian even if the contracts are for necessities. However, when the minor acts as Home an agent of his parents or guardian, they can be held liable for his acts.

8. Minor agent : A minor can act as an agent but he Will not be personally liable for any of his acts. The principal will be liable to the third parties for the acts of the minor agent which he does in the ordinary course of dealings.

9. Minor partner : Section 30 of partnership Act provides that a minor may be admitted to benefits of partnership with the consent of all other partners. His liability is limited to his share in partnership. He cannot take part in management.

10. Minor as an insolvent : A minor cannot be declared as an insolvent. This is so because all agreements with a minor are void. Moreover, the minor is not personally liable for any debt incurred during the period of his minority.

11. Minor shareholder : A minor cannot become shareholder in a company since, he is incompetent to enter into a contract A company can also refuse to register, transfer or transmission of shares in favor of a minor unless the shares are fully paid. In case

a minor inherits certain shares, he may become a shareholder acting through his lawful guardian.

12. Minor under Negotiable Instruments Act : Minor can draw or negotiate negotiable instruments (ie., Bill of Exchange, Promissory Note, Cheque). But he incurs no personal liability in such cases. A negotiable instrument drawn in favor of a minor can be enforced by him. A minor can be a promisee or payee. He can also become an endorser by transfer of a negotiable