

Q P Code 19866

-----Total Marks:75

(2 ½ hours)

N.B: (1) Figures to the right indicate full marks

(2) All questions are compulsory

Date:

Day:

Marks:75

Duration:

Q.1 OBJECTIVE QUESTIONS

(15 MARKS)

A.FILL IN THE BLANKS (any 8)

(8 MARKS)

- (1) _____ means a right available against the whole world or world at large.
(a) *Right in Rem.* (b) *Right in Personam* (c) *None of the above.*
- (2) The new offer by the offeree to the offeror is called _____.
(a) *Cross offer.* (b) *Counter offer.* (c) *Standing offer.* (d) *None of the above.*
- (3) _____ means a person is aware of what is going on , turns a blind eye and does nothing about it.
(a) *Lieu* (b) *Connive* (c) *None of the above* (d) *both.*
- (4) A court order compelling someone to stop doing something or not to do something is known as _____.
(a) *Estoppel.* (b) *Suit* (c) *Injunction* (d) *None of the above.*
- (5) General Principle of Law is known as _____.
(a) *Doctrine.* (b) *Tort* (c) *Forfeit*
- (6) _____ means a numbered paragraph in a statute.
(a) *Right in Rem.* (b) *Section* (c) *None of the above.*



(7) _____ Means signing of a document in presence of witness to show the signature is genuine.

(a) Crossing. (b) Attestation. (c) None of the above.

(8) _____ means a Short phrase which formulates a legal principle.

(a) Maxim (b) Clauses (c) None of the above (d) both.

(9) _____ is a person who represents another company in matters relating to contract.

(a) Servant. (b) Agent (c) Master (d) None of the above.

(10) Not legally valid or having no legal force are _____.

(a) Quasi Contracts. (b) Void Agreements (c) Valid Agreements (d) None of the above

B. True or False (Any 7)

(1) Agreement means a contract

(2) Payee is a person who pays money.

(3) Fixed Deposit receipt of a bank is a negotiable instrument.

(4) A specific form is prescribed for sale of goods.

(5) A contract of guarantee requires two parties.

(6) Boarding a Best Bus is a contract.

(7) Sale by Sample is an expressed condition of a contract.

(8) A tells B "I am willing to die for my country" – This is a contract.

Q.2 "All Agreements are not contracts but all contracts are agreements". Discuss the statement explaining the essential elements of a valid ~~agreement~~ ^{contract}?

Contract

15

OR

Q.2 Define "Bailment" and distinguish it from pledge?

15



Q.3 Explain "Doctrine of Caveat Emptor". Are there any exceptions to this rule? **15**

OR

Q.3 (a) Distinguish between a Cheque and a Bill of Exchange? **7**

(b) Write an explanatory note on "Mistake of Law"? **8**

Q.4 Define a Negotiable Instrument set out its characteristics? **15**

OR

Q.4 Define Coercion and distinguish it from undue influence? **15**

Q.5 Write short notes on **any three** of the following: **15**

(a) Goods and Future Goods

(b) Bill in Sets

(c) Wager

(d) Bills of Exchange

(e) Minors agreement



ANSWER KEY

Q.1 OBJECTIVE QUESTIONS

(15 MARKS)

A. FILL IN THE BLANKS (any 8)

(8 MARKS)

- (1) Right in Personam means a right available against the whole world or world at large.
(a) Right in Rem. (b) Right in Personam (c) None of the above.
- (2) The new offer by the offeree to the offeror is called Counter Offer.
(a) Cross offer. (b) Counter offer. (c) Standing offer. (d) None of the above.
- (3) Connive means a person is aware of what is going on, turns a blind eye and does nothing about it.
(a) Lieu (b) Connive (c) None of the above (d) both.
- (4) A court order compelling someone to stop doing something or not to do something is known as Injunction.
(a) Estoppel. (b) Suit (c) Injunction (d) None of the above.
- (5) General Principle of Law is known as Doctrine.
(a) Doctrine. (b) Tort (c) Forfeit
- (6) Section means a numbered paragraph in a statute.
(a) Right in Rem. (b) Section (c) None of the above.
- (7) Attestation Means signing of a document in presence of witness to show the signature is genuine.
(a) Crossing. (b) Attestation. (c) None of the above.
- (8) Maxim means a Short phrase which formulates a legal principle.
(a) Maxim (b) Clauses (c) None of the above (d) both.
- (9) Agent is a person who represents another company in matters relating to contract.
(a) Servant. (b) Agent (c) Master (d) None of the above.
- (10) Not legally valid or having no legal force are Void Agreement.
(a) Quasi Contracts. (b) Void Agreements (c) Valid Agreements (d) None of the above



B. True or False (Any 7)

(7 Marks)

- (1) Agreement means a contract - False
- (2) Payee is a person who pays money - False
- (3) Fixed Deposit receipt of a bank is a negotiable instrument.- False
- (4) A specific form is prescribed for sale of goods.- True
- (5) A contract of guarantee requires two parities.- False
- (6) Boarding a Best Bus is a contract.- True
- (7) Sale by Sample is an expressed condition of a contract.- False
- (8) A tells B " I am willing to die for my country" – This is a contract. - False

.2 "All Agreements are not contracts but all contracts are agreements". Discuss the statement explaining the essential elements of a valid ~~argument~~ ^{contract}?

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A- No doubt it is a valid and true statement. Before critically discussing the statement, we must know the exact and basic meanings of the two terms contract and agreement in the context of business law. For understanding the meaning, we have to go to the contract act 1872 that is applicable.

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.

Definition of contract

According to section 2(h) of the Contract Act 1872:

" An agreement enforceable by law is a contract."

A contract therefore, is an agreement the which creates a legal obligation i.e., a duty enforceable by law. From the above definition, we find that a contract essentially consists of two elements:

- (1) An agreement and (2) Legal obligation i.e., a duty enforceable by law.



All contracts are agreements:

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.

All agreements are not contracts

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.

According to Sec. 10, “All agreements are contract 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.”

Thus, Sections 2(h) and 10 of the Act state that there are some essential elements of a valid contract. If any of these elements is not satisfied by an agreement, it will affect the validity and will not form a valid contract.



On analysing the contents of Sec. 10. It is revealed that the following are the essentials of a valid contract:-

1. Offer and acceptance:

In a contract there must be at least two parties one of them making the offer and the other accepting it. There must thus be an offer by one party and its acceptance by the other. The offer when accepted becomes agreement.

2. Legal relationship:

Parties to a contract must intend to constitute legal relationship. It arises when the parties know that if any one of them fails to fulfil his part of the promise, he would be liable for the failure of the contract.

If there is no intention to create legal relationship, there is no contract between parties. Agreements of a social or domestic nature which do not contemplate a legal relationship are not contracts.

3. Consensus-ad-idem:

The parties to an agreement must have the mutual consent i.e. they must agree upon the same thing and in the same sense. This means that there must be consensus ad idem (i.e. meeting of minds).

4. Competency of parties:

The parties to an agreement must be competent to contract. In other words, they must be capable of entering into a contract.

According to Sec 11 of the Act, "Every person is competent to contract who is of the age of majority according to the law to which he is subject to and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

Thus, according to Section 11, every person with the exception of the following is competent to enter into a contract:-

- (i) A minor,
- (ii) A person of unsound mind, and
- (iii) A person expressly declared disqualified to enter into a contract under any Law.

5. Free consent:

Another essential of a valid contract is the consent of parties, which should be free. Under Sec. 13, "Two or more parties are said to consent, when they agree upon the same thing in the same

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sense.” Under Sec. 14, the consent is said to be free, when it is not induced by any of the following:- (i) coercion, (ii) misrepresentation, (iii) fraud, (iv) undue influence, or (v) mistake.

6. Lawful consideration:

Consideration is known as ‘something in return’. It is also essential for the validity of a contract. A promise to do something or to give something without anything in return would not be enforceable at law and, therefore, would not be valid.

Consideration need not be in cash or in kind. A contract without consideration is a ‘wagering contract’ or ‘betting’. Besides, the consideration must also be lawful.

7. Lawful objects:

According to Sec. 10, an agreement may become a valid-contract only, if it is for a lawful consideration and lawful object. According to Sec. 23, the following considerations and objects are not lawful:-

- (i) If it is forbidden by law;
- (ii) If it is against the provisions of any other law;
- (iii) If it is fraudulent;
- (iv) If it damages somebody’s person or property; or
- (v) If it is in the opinion of court, immoral or against the public policy.

Thus, any agreement, if it is illegal, immoral, or against the public policy, cannot become a valid contract.

8. Agreement not expressly declared void:

An agreement to become a contract should not be an agreement which has been expressly declared void by any law in the country, as it would not be enforceable at law.

Under different sections of the Contract Act, 1872, the following agreements have been said to be expressly void, viz :-

- (i) Agreements made with the parties having no contractual capacity, e.g. minor and person of unsound mind (Sec. 11).
- (ii) Agreements made under a mutual mistake of fact (Sec. 20).
- (iii) Agreements with unlawful consideration or object (Sec. 23).

- (iv) Agreements, whose consideration or object is unlawful in part (Sec. 24).
- (v) Agreements having no consideration (Sec 25).
- (vi) Agreements in restraint of marriage (Sec. 26).
- (vii) Agreements in restraint of trade (Sec. 27).
- (viii) Agreements in restraint of legal proceedings (Sec. 28).
- (ix) Agreements, the meaning of which is uncertain (Sec. 29).
- (x) Agreements by way of wager (Sec. 30), and
- (xi) Agreements to do impossible acts (Sec. 56).

9. Certainty and possibility of performance:

Agreements to form valid contracts must be certain, possible and they should not be uncertain, vague or impossible. An agreement to do something impossible is void under Sec. 56.

10. Legal formalities:

The agreement may be oral or in writing. When the agreement is in writing it must comply with all legal formalities as to attestation, registration. If the agreement does not comply with the necessary legal formalities, it cannot be enforced by law.

OR

Q.2 Define "Bailment" and distinguish it from pledge?

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A- Bailment is a kind of activity in which the property of one person temporarily goes into the possession of another. The ownership of the property remains with the giver, while only the possession goes to another. Several situations in day to day life such as giving a vehicle for repair, or parking a scooter in a parking lot, giving a cloth to a tailor for stitching, are examples of bailment. Section 148 of Indian Contract Act 1872, defines bailment as follows –

Section 148 – A 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 directions of the person delivering them. The person delivering the goods is called the bailor and the person to whom they are delivered is called the bailee.

Explanation – If a person is already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee and the bailor becomes the bailor of such goods although they may not have been delivered by way of bailment.

In simple terms, **bailment** refers to hand over or assignment the goods, which involves change in possession but not in the ownership of goods. It is the transfer of goods from one party to another party for some specific purpose. It is not same as pledge, which is just a variant of bailment. **Pledge** implies a contract, in which an article is delivered or say deposited with the money lender, as security for repayment of a debt owed by him/her or performance of promise.

The main difference between pledge and bailment lies in the use of goods, i.e. the use of goods is prohibited in pledge, whereas in the case of bailment the party to whom the goods are being handed over can use them

BASIS FOR COMPARISON	BAILMENT	PLEDGE
Meaning	When the goods are temporarily handed over from one person to another person for a specific purpose, it is known as bailment.	When the goods are delivered to act as security against the debt owed by one person to another person, it is known as the pledge.
Defined in	Section 148 of the Indian Contract Act, 1872.	Section 172 of the Indian Contract Act, 1872.
Parties	The person who delivers the goods is known as the Bailor while the person to whom the goods are delivered is known as Bailee.	The person who delivers the goods is known as Pawnor while the person to whom the goods are delivered is known as Pawnee.
Consideration	May or may not be present.	Always present.
Right to sell the goods	The party whom goods are being delivered has no right to sell the goods.	The party whom goods are being delivered as security has the right to sell the goods if the party who delivers the goods fails to pay the debt.

BASIS FOR COMPARISON	BAILMENT	PLEDGE
Use of Goods	The party whom goods are being delivered can use the goods only, for the specified purpose.	The party whom goods are being delivered has no right to use the goods.
Purpose	Safe keeping or repairs, etc.	As security against payment of debt.


Q.3 Explain "Doctrine of Caveat Emptor". Are there any exceptions to this rule?

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A. *Caveat Emptor* is the Latin term for "Let the Buyer Beware." It is a doctrine that often places the burden on buyers to reasonably examine property and goods before they purchase it and take responsibility for its condition. It is mostly applicable to items that are not covered under a strict warranty.

Section 16(2) of the Sale of Goods Act, 1930 states that 'Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.' Here, 'Buyer' means a person who buys or agrees to buy goods [Section 2(1) of the Sale of Goods Act, 1930], 'Seller' means a person who sells or agrees to sell goods [Section 2(13) of the Sale of Goods Act] and Section 2(7) of the Sale of Goods Act states that "Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale'. The phrase 'Caveat Emptor' arises from the fact that buyers typically have less information about the good or service they are purchasing, while the seller has more information. Any defect in the goods purchased by the buyer may be known to the seller but not to the buyer.

Under the principle of *caveat emptor*, the buyer cannot recover damages from the seller for defects on the property or goods that rendered the same unfit for use. The only exception was if the seller actively concealed latent defects or otherwise made material misrepresentations amounting to fraud. The general rule of law dictates that a purchaser assumes the risk of his/her purchase. The intent of the rule is to place a duty of care on the buyer in selecting an item and putting forth appropriate inquiry before completing the sale. In this way, the seller is also protected from liability for buyer's remorse.



As a seller has to sell his goods, he cannot reveal unflattering truths about his goods and when a buyer is buying goods, it his duty to check the working and the quality of the goods that he wished to obtain from the seller. A buyer, in contract of sale of specific goods, purchases the goods at his own risk as regard as the quality, price of the goods except on the case of fraud or when any condition to that effect is laid down in the contract.

For example, In *Ward Vs Hobbs*, a contract of sale gets formed between A and B according to the terms of which A has to sell an animal from his farm to B. Negligently B selects an animal which has been suffering from some sickness. That sickness is characterized by propagation from one animal to the other and the ultimate effect is death of the animal. It should be noted that the sickness is externally visible. B, negligently selects such animal and as a result all animals present in B's farm comes across death. B sues A. Court decides that B is negligent, he cannot blame the seller for his (A) own negligence and therefore B cannot claim any compensation. Thus caveat emptor rule protects the seller. This rule is unfavorable to buyer.

Exceptions to the Rule of 'Caveat Emptor'

There are certain exceptions to this rule.

Sale by Description:

Section 15 of the Sales of Goods Act, 1930 defines 'Sale by Description' as 'Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.'

The term 'correspond to description' as used in Section 15 means the buyer must get the article or goods that was described in the contract. The buyer must contract for the goods as described so that any change in the description makes the goods substantially different from those that were described so as to constitute a failure of consideration.

The rule of 'Caveat Emptor' does not apply when goods are bought with a description as when goods are bought with a description it is believed that the goods bought will match the description that the seller gave the buyer in every way. Any difference allows the buyer to refuse the goods.

Purchase by Samples and Description:

When goods are bought with a sample and a description and the bulk of the goods do not match the sample goods or the description of the goods given by the seller, then the buyer can reject the

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goods as it is expected that the bulk of the goods will match the sample and the description of the goods as given by the seller to the buyer.

Fitness for Purpose:

The buyer informs the seller the purpose for which he requires the goods and he then has to rely completely on the skill and the judgement of the seller. In such cases, it is expected that the goods so obtained by the buyer from the seller, serve the purpose and if it is not so, then the buyer may reject the goods.


Section 16 of the Sale of Goods Act, 1930 deals with Implied conditions as to quality or fitness.— Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale and clause (1) deal with the exception of fitness of purpose; 'Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.' The words by implication in Section 16(1) clearly indicate that the communication of the purpose to the seller need not be expressed in words. It may be inferred from the description of the goods given by the buyer to the seller or from the circumstances of the case. The buyer must rely on the seller's skill or judgment.

Trade Name:

When a buyer buys goods of a particular patented brand, it is expected that these goods are of a certain quality and standard but there is no implied condition as to its fitness for any particular purpose. The exception of 'trade name' is a proviso to Section 16(1). When the buyer buys an article by specifying its patent or other trade name, there is no implied condition of the fitness of the goods for any particular purpose. Since the buyer buys the good specifying the trade name, the seller's only undertaking is that the good shall be of the same trade name as demanded by the buyer.

Merchantable Quality:

The Sale of Goods Act, 1930 does not define 'merchantable quality' but it is widely used in commercial law. It means that the goods comply with the description given by the seller in the contract. If the goods have any defect, they are not of merchantable quality.



Where the goods are bought by description from a seller who deals in goods of that description whatever he is manufacturer or producers or not, there is an implied condition that the goods shall be of merchantable quality.

Usage of Trade:

Where the usage or trade annexes an implied condition or warranty as to quality or fitness for a particular purpose and seller deviates from that, then the rule of caveat emptor does not apply.

Sale by Sample:

In a contract of sample by sale implies an undertaking by the seller that the goods which are to be supplied in bulk will be similar to the sample given to the buyer. If the goods supplied do not correspond with the sample, it amounts to breach of contract by the seller, and the buyer is entitled to reject the goods. If the buyer accepts the goods instead then the contract is not severable.

In *Wallis Vs Prat*, a contract of sale gets formed between A and B according to which A has to supply English sain fain seeds. The contract is based on samples. But A supplies giant sain fain seeds. Court decides that buyer can repudiate the contract of Sale.

Consent by Fraud:

Where the seller makes a false statement intentionally to the buyer and the buyer relies on it or where the seller knowingly conceals the defects in the good, the doctrine of caveat emptor does not apply as the buyer did not give his consent freely. He was kept in the dark regarding the contract that he entered into with the seller.

The implication of the doctrine of 'Caveat Emptor' is that the seller is not obligated to or has no duty to disclose all problems with the goods, voluntarily. It is the duty of the buyer to closely scrutinise and check the goods that he buys. This doctrine allows the burden to be taken off from the seller and hence this doctrine is an important part of commercial and contract law.

OR

Q.3 (a) Distinguish between a Cheque and a Bill of Exchange?

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A- **Cheque** is an instrument which contains an unconditional order, drawn on a banker, directing to pay a certain sum of money to the person whose name is specified in the instrument. In contrast, **Bill of Exchange** is a document contains an unconditional order, directing a

person, to pay a certain amount to a specified person.

A negotiable instrument is a written document, which entitles a certain amount and is transferable from one person to another, by simple delivery or by endorsement and delivery. There are three types of a negotiable instrument as per statute, i.e. cheque, bills of exchange and promissory note. There are many instances when people juxtapose cheque for a bill of exchange, but they are different, in the sense that a bill of exchange requires acceptance, whereas there is no need for acceptance in cheque.

The difference between a Cheque and a Bill of Exchange are stated as follows:

Comparison Chart

BASIS FOR COMPARISON	CHEQUE	BILL OF EXCHANGE
Meaning	A document used to make easy payments on demand and can be transferred through hand delivery is known as cheque.	A written document that shows the indebtedness of the debtor towards the creditor.
Defined in	Section 6 of The Negotiable Instrument Act, 1881	Section 5 of The Negotiable Instrument Act, 1881
Validity Period	3 months	Not Applicable
Payable to bearer on demand	Always	Cannot be made payable on demand as per RBI Act, 1934
Grace Days	Not Applicable, as it is always payable at the time of presentment.	3 days of grace are allowed.
Acceptance	A cheque does not require acceptance.	Bill of exchange needs to be accepted.

BASIS FOR COMPARISON	CHEQUE	BILL OF EXCHANGE
Stamping	No such requirement.	Must be stamped.
Crossing	Yes	No
Drawee	Bank	Person or Bank
Noting or Protesting	If the cheque is dishonoured it cannot be noted or protested	If a bill of exchange is dishonoured it can be noted or protested.

(b) Write an explanatory note on "Mistake of Law"?

A- The fifth element defecting the consent is MISTAKE, contract by mistake are either void or voidable. It is not a free consent. One or both of the parties may be working under same.

Mistake is of three kinds :-

1. Mistake in the mind of the parties is such that there is no genuine agreement at all. There is no meeting of minds or consensus ad idem.
2. There may be mistake as to a matter of fact relating to that agreement.
3. The mistake essential to the agreement as to the subject matter.

TYPES OF MISTAKE :-

Mistake when there is no consensus ad idem: According to sec.13: two or more persons are said to consent when they agree upon the same thing in same sense. If there is no meeting of minds or consensus ad idem, there arises no contract which could be enforced.

Section 20 requires that:- Mistake of both the parties : The agreement is void if there is mistake on the part of both the parties. A case Ayekam Angahal Singh v/s Union Bank Of India, AIR-1970: It was held that since the mistake was unilateral, the contract was not affected thereby and the same could not be avoided.

According to Sec.21 of the Contract Act which lays that mistake of law of country is not excusable i.e. any contract is done under a mistake of law being followed in India then such contract shall not be voidable, but if contract is under a mistake of foreign law that it shall be void, i.e. Mistake of Foreign Law and Mistake as to individual rights. Case : Cooper v/s Phibbs-

1867: The court held that the mistake related to general ownership shall have the same effect as the mistake of fact would have. Mistake of fact is not excusable.

ILLUSTRATION :- 'A' agrees to buy horse from 'B' at the time of agreement, the horse had already died but both the parties had no knowledge of it such, agreement is void.

The following points are important in respect of Mistake of Fact :-

1. Mistake must be mutual.
2. Mistake must relate to any substantive fact, like mistake as to identity of the parties, identity of subject matter identity of nature of transaction etc.
3. Mistake must relate to present or existing fact.
4. Mistake as to Promise:- If a mistake because of which the promise does not reflect the real intention which was there in the proposed agreement, such an agreement would be void. Case :Hartog v/s Colins& Shields: 1939 It was held that there had arisen no contract in this case because the buyer could have noticed the mistake.

Q.4 Define a Negotiable Instrument set out its characteristics ?

15

The term 'negotiable' means transferable and the word 'document' means 'in writing'. Therefore, negotiable means a written promise or order to pay money which may be transferred from one person to another.

Section 13 of the Negotiable Instruments Act, 1881 states – “A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.” A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. [Section 13(2)].

A negotiable instrument has the following characteristics.

1. Property

The possessor of the negotiable instrument is presumed to be the owner of the property contained therein. A negotiable instrument does not merely give possession of the instrument but right to property also. The property in a negotiable instrument can be transferred without any formality. In the case of a bearer instrument, the property passed by mere delivery to the transferee. In the case of an order instrument, endorsement and delivery are required for the transfer of property.

2. Title

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The transferee of a negotiable instrument is known as holder in due course.' A bonafide transferee for value is not affected by any defect of title on the part of the transferor or of any of the previous holders of the instrument. This is the main distinction between a negotiable instrument and other subjects of ordinary transfer. The general rule of nemo dat quod non habet does not apply to negotiable instruments.

3. Rights

The transferee of the negotiable instrument can sue in his own name, in case of dishonor.

A negotiable instrument can be transferred any number of times till it is at maturity. The holder of the instrument need not give notice of transfer to the party liable on the instrument to pay.

4. Presumptions

Certain presumptions apply to all negotiable instruments e.g. a presumption that consideration has been paid under it.

5. Prompt Payment

A negotiable instrument enables the holder to expect prompt payment because a dishonor means the ruin of the credit of all persons who are parties to the instrument.

OR

Q.4 Define Coercion and distinguish it from undue influence?

15

A- '**Coercion**' is the act of threatening a person, to compel him/her to enter into the contract and perform the obligation. On the contrary, '**Undue Influence**' is an act of controlling the will of the other party, due to the dominant position of the first party. When the consent of any of the parties to contract is affected by coercion or undue influence, it is said that consent is not free.

The essence of a contract is agreement, i.e. mutual consent, i.e. the parties to the contract agreed upon the same thing in the same sense i.e. Consensus ad idem. Consent of the party is not enough for agreement, but it requires free consent. It is the most important element of the valid contract. When the consent of the one of the party is not free if it is said to be tainted by coercion, undue influence, misrepresentation, fraud or mistake.

The Difference between Coercion and Undue influence is as follows-

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Comparison Chart

BASIS FOR COMPARISON	COERCION	UNDUE INFLUENCE
Meaning	Coercion is an act of threatening which involves the use of physical force.	Undue Influence is an act of influencing the will of the other party.
Sections	It is governed by Section 15 of the Indian Contract Act, 1872.	It is governed by Section 16 of the Indian Contract Act, 1872.
Use of	Psychological pressure or Physical force	Mental pressure or Moral force
Purpose	To compel a person in such a way that he enters into a contract with the other party.	To take unfair advantage of his position.
Criminal Nature	Yes	No
Relationship	The relationship between parties is not necessary.	The act of undue influence is done only when the parties to the contract are in relationship. Like teacher - student, doctor - patient etc.

Q.5 Write short notes on **any three** of the following:

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(a) Goods and Future Goods

A- 'Goods' form the subject matter of a contract of sale. We have already seen the meaning of the term 'goods' as per Section 2(7). Goods may be classified into the following types:

1. Existing goods;
2. Future goods; and

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3. Contingent goods.

Future goods:

Goods to be manufactured, produced or acquired by the seller after the making of the contract of sale are called 'future goods' [Sec. 2(6)]. These goods may be either not yet in existence or be in existence but not yet acquired by the seller. It is worth noting that there can be no present sale of future goods because property cannot pass in what is not owned by the seller at the time of the contract. So even if the parties purport to effect a present sale of future goods, in law, it operates only as an 'agreement to sell' [Sec. 6(3)].

Illustrations :

(a) A agrees to sell to B all the milk that his cow may yield during the coming year. This is a contract for the sale of future goods.

(b) X agrees to sell to Y all the mangoes which will be produced in his garden next year. It is contract of sale of future goods, amounting to 'an agreement to sell.'

(c) P contracts on 1 January 1990, to sell to B ten bales of Egyptian cotton to be delivered and paid by 1 March, 1990. This is a valid contract of sale, amounting to an agreement to sell, even though P has no cotton bales with him at the time of making the contract.

(b) Bill in Sets

A- Section 132 in The Negotiable Instruments Act, 1881

132. Set of bills.—Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

(Exception) —When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

(c) Wager

A- Literally the word 'wager' means 'a bet' something stated to be lost or won on the result of a doubtful issue, and, therefore, wagering agreements are nothing but ordinary betting agreements.

Section 30 of the Indian Contract Act talks about wagering agreements, which reads as “agreements by way of wager are void”. The section does not define ‘wager.’ Section 30 states that,

“Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.”

Exception in favour of certain prizes for horse racing.

The expression “wager” has not been defined in the Indian Contract Act. A classic definition is however available in the case of *Carlill v Carbolic Smoke Ball Co.* “A wagering contract is one by which two persons, professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependant on the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither of the parties having any other interest in that contract than the sum or stake he will so win or lose, there being no other consideration for making of such contract by either of the parties. If either of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering contract.”

The above definition excludes event which have occurred.

(d) Bills of Exchange

A- A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

—Section 5 of the Negotiable Instruments Act, 1881.

Bill of exchange is a negotiable instrument which is payable either to order or to the bearer. Section 13 (1) of the Negotiable Instruments Act, 1881 defines negotiable instruments as “A promissory note, bill of exchange or cheque payable either to order or to bearer”.

A bill of exchange is generally drawn by the creditor on his debtor. It should be accepted either by the debtor or any person(s) on his/her behalf. It is worth mentioning that before its acceptance by the debtor, it is just a draft. It should be accepted either by a person upon whom it is drawn or someone else on his/her behalf. The stage at which the purchaser of goods signs the draft and writes ‘Accepted’ on it, it becomes a bill of exchange.

Example: On 1.1.2011, Pawan sold goods to Harish on credit for Rs. 25,000. Pawan drew a bill for the same amount for two months and sent it to Harish for his acceptance on the same day. On

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5.1.2011 Pawan got the acceptance of Harish. In this case, before 5.1.2011 it is known as mere draft. It becomes a bill of exchange only on 5.1.2011 when Harish accepted the bill.

(e) Minors agreement

The term “minor/minors” is no where defined in the Contract Act. But taking into consideration the wordings of **Section 11**, a minor is a person who has not attained the age of 18 years. The age of majority of a person is regulated by **Section 3 of the Indian Majority Act, 1857**. But where a guardian has been appointed to the person or property of the minor by a Court or when the minor’s property is under supervision of Courts of wards, the age of majority of such a person is 21 years and not 18 years.

Section 11 of the Act expressly forbids a minor from entering into a Contract. The effect of this express prohibition is that any contract entered into by a minor is *void ab initio* regardless of whether the other party was aware of his minority or not.

Case – Mohoribibi vs. Dharmodas Ghose – The Privy Council ruled that – the Act makes it essential that all contracting parties should be competent to contract, and especially provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of this Act. It was accordingly held that a mortgage made by a minor was void, and a money-lender who has advanced money to a minor on the security of the mortgage is not entitled to repayment.

The law dealing with minor’s agreement is based on two principles –

- a) that the law must protect the minor against his own inexperience, which may enable an adult to take unfair advantage of him, or to induce him to enter into a contract which, though in itself is fair, is simply imprudent (e.g. – if the minor for a fair price buys something which he cannot afford); and
- b) that the law should not cause unnecessary hardship to adults who deal fairly with minors.