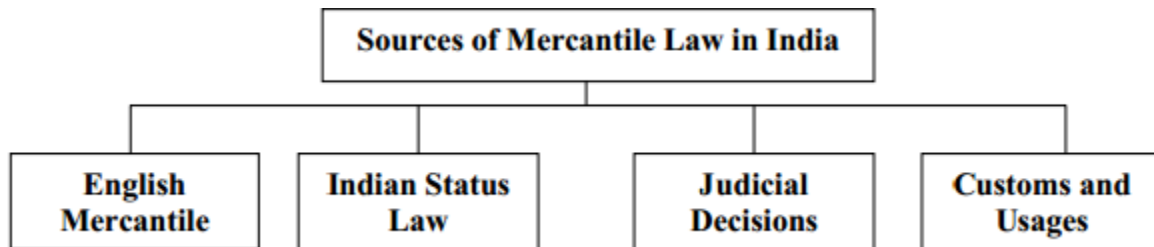


## QUESTION BANK ON BUSINESS LAW-I

### BCA III SEM

#### **Q.1 What is Law? Explain the Following Definitions under sec. 2**

Law means a 'set of rules' which governs our behaviours and relating in a civilized society. So there is no need of Law in a uncivilized society.



### **DEFINITIONS (Sec 2)**

1. **Offer(i.e. Proposal) [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 person either to such act or abstinence, he is said to make a proposal.
  2. **Acceptance 2(b)**:- When the person to whom the proposal is made, signifies his assent there to , the proposal is said to be accepted.
  3. **Promise 2(b) :-** A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.
  4. **Promisor and promisee 2(c) :-** When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.
  5. **Consideration 2(d)**:- When at the desire of the promisor, the promisee or any other person *has done or abstained from doing something or does or abstains from doing something or promises to do or abstain from doing something*, such act or abstinence or promise is called a consideration for the promise.
- ❖ Price paid by the one party for the promise of the other Technical word meaning **QUID-PRO-QUO** i.e. *something in return*.

6. **Agreement 2(e) :-** Every promise and set of promises forming the consideration for each other. In short, agreement = offer + acceptance.
7. **Contract 2(h) :-** An agreement enforceable by Law is a contract.
8. **Void agreement 2(g):-** An agreement not enforceable by law is void.
9. **Voidable contract 2(i):-** An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.
10. **Void contract :-** A contract which ceases to be enforceable by Law becomes void when it ceases to be enforceable.

**Q.2 What are the Essential Elements of Valid Contract?**

**Q.3 “All Contracts are Agreements but all Agreements are not Contract”. Explain in detail.**

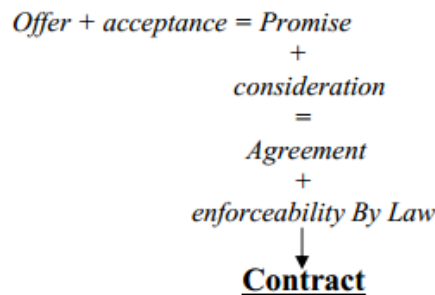
## ESSENTIALS OF A VALID CONTRACT

*“All agreements are contracts, if they are made –*

- by free consent of the parties, competent to contract,
- for a lawful consideration and
- with a lawful object, and
- not hereby expressly declared to be void.”

- Sec.10.

### ESSENTIALS OF VALID CONTRACT



1. **Proper offer and proper acceptance with intention to create legal relationship.**  
**Cases;-** A and B agree to go to a movie on coming Sunday. A does not turn in resulting in loss of B's time B cannot claim any damages from B since the agreement to watch a movie is a domestic agreement which does not result in a contract.
  - In case of social agreement there is no intention to create legal relationship and there the is no contract (Balfour v. Balfour)

➤ In case of commercial agreements, the law presume that the parties had the intention to create legal relations.

➤ [an agreement of a purely domestic or social nature is not a contract ]

2. **Lawful consideration :-** consideration must **not** be **unlawful, immoral or opposed to the public policy.**

3. **Capacity:-** The parties to a contract must have capacity (legal ability) to make valid contract.

**Section 11:-** of the Indian contract Act specify that every person is competent to contract provided.

(i) Is of the age of majority according to the Law which he is subject, and

(ii) Who is of sound mind and

(iii) Is not disqualified from contracting by any law to which he is subject.

➤ Person of unsound mind can enter into a contract during his lucid interval.

➤ An alien enemy, foreign sovereigns and accredited representative of a foreign state. Insolvents and convicts are not competent to contract.

4. **Free consent :-** consent of the parties must be genuine consent means agreed upon **something in the same sense** i.e. there should be **consensus – ad – idem.** A consent is

said to be free when it is not caused by *coercion, undue influence, fraud, misrepresentation or mistake.*

5. **Lawful object**

- The object of agreement should be lawful and legal.
- Two persons cannot enter into an agreement to do a criminal act.
- Consideration or object of an agreement is unlawful if it
  - (a) is forbidden by law; or
  - (b) is of such nature that, if permitted, would defeat the provisions of any law; or
  - (c) is fraudulent; or
  - (d) Involves or implies, injury to person or property of another; or
  - (e) Court regards it as immoral, or opposed to public policy.

6. **Possibility of performance:**

- The terms of the agreement should be capable of performance.
- An agreements to do act, impossible in itself cannot be enforced.

**Example :** A agrees to B to discover treasure by magic. The agreement is void because the act in itself is impossible to be performed from the very beginning.

7. **The terms of the agreements are certain or are capable of being made certain [29]**

**Example :** A agreed to pay Rs.5 lakh to B for ultra-modern decoration of his drawing room. The agreement is void because the meaning of the term “ ultra – modern” is not certain.

8. **Not declared Void**

- The agreement should be such that it should be capable or being enforced by law.
- Certain agreements have been expressly declared illegal or void by the law.

**9. Necessary legal formalities**

- A contract *may be oral or in writing*.
- Where a particular type of contract is required by law to be in writing and registered, it must comply with necessary formalities as to writing, registration and attestation.
- If legal formalities are not carried out then the contract is not enforceable by law.

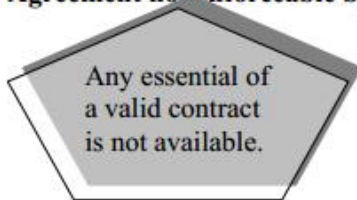
**Example :** A promise to pay a time. Barred debt must be in writing.

❖ Agreement is a wider term than contract where as all contracts are agreements. All agreements are not contracts.

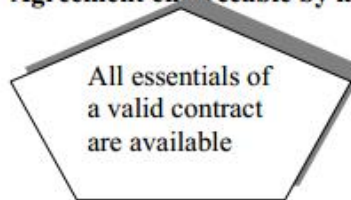
**All Contracts are Agreements, but all Agreements are not Contracts**

The various agreements may be classified into two categories:

**Agreement not enforceable by law**



**Agreement enforceable by law**



**Conclusion:**

Thus we see that an agreement may be or may not be enforceable by law, and so **all agreement are not contract**. Only those agreements are contracts, which are enforceable by law, In short.

**Contracts = Agreement + Enforceability by Law**

**Hence, we can conclude “All contracts are agreement, but all agreements are not contracts.”**

**Q.4 Write A Difference Between Contract and Agreement.**

**Distinction between Contract & Agreement**

Basis	Contract	Agreement
1. Section :	Sec. 2(h)	Sec. 2(e)
2. Definition :	A contract is an agreement enforceable by law.	Every promise or every set of promises forming consideration for each other is an agreements.
3. Enforceability :	Every contract is enforceable	Every promise is not enforceable.
4. Interrelationship	A contract includes an agreement.	An agreement does not include a contract.
5. Scope :	The scope of a contract is limited, as it includes only commercial agreements.	Its scope is relatively wider, as it includes both social agreement and commercial agreements.
6. Validity :	Only legal agreements are called contracts.	An agreement may be both legal and illegal.
7. Legal Obligation	Every contract contains a legal obligation.	It is not necessary for every agreement to have legal obligation.

## Q.5 What are the types of Contracts?

### Types of contracts :-

(1) On the Basis of creation	(2) On the Basis of Validity	(3) On the Basis of execution	(4) On the Basis of Liability
a. Express contract b. Implied contract c. Tacit contract d. Quasi contract e. E contract	a. Valid contract b. Void contract c. Voidable contract d. Unenforceable contract e. Illegal contract	a. Executed contract b. Executed contract c. Partly executed and party executory	a. Bilateral contract b. Unilateral contract

#### *I. On the Basic of Creation :*

(a) **Express contract** :- A contract made by word spoken or written. According to **sec 9** in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express.

**Example :** A says to B ‘will you purchase my bike for Rs.20,000?’ B says to A “Yes”.

(b) **Implied contract**:- A contract inferred by

- ❖ The conduct of person or
- ❖ The circumstances of the case.

By implies contract means implied by law (i.e.) the law implied a contract through parties never intended. According to **sec 9** in so far as such proposed or acceptance is made otherwise than in words, the promise is said to be implied.

#### **Example:**

A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.

(c) **Tacit contract** - A contract is said to be tacit when it has to be inferred from the conduct of the parties. **Example** obtaining cash through automatic teller **machine**, sale by fall hammer of an auction sale.

(d). **Quasi Contracts are contracts which are created -**

- Neither by word spoken
- Nor written
- Nor by the conduct of the parties.
- But these are created by the law.

#### **Example:**

If Mr. A leaves his goods at Mr. B’s shop by mistake, then it is for Mr. B to return the goods or to compensate the price. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expenses of the other.

(e). **e – Contract**: An e – contract is one, which is entered into between two parties via the internet.

### III. *On the Basis of Validity:*

- (a) **Valid contract:-** An agreement which satisfies all the requirements prescribed by law  
On the basis of creation
- (b) **Void contract (2(j)):-** a contract which ceases to be enforceable by law because void when of ceased to be enforceable  
When both parties to an agreement are:-  
Under a mistake of facts [20]  
Consideration or object of an agreement is unlawful [23]  
Agreement made without consideration [25]  
Agreement in restraint of marriage [26]  
Restraint of trade [27]  
Restrain legal proceeding [28].  
Agreement by wage of wager [30]
- (c) **Voidable contract 2(i) :-** an agreement which is enforceable by law *at the option of one or more the parties but not at the option of the other or others is a voidable contract.*  
Result of coercion, undue influence, fraud and misrepresentation.
- (d) **Unenforceable contract:** - where a contract is good in substance but because of some *technical defect* i.e. absence in writing barred by imitation etc one or both the parties cannot sue upon but is described as unenforceable contract.
- (e) **Illegal contract:-** It is a contract which the law forbids to be made. All illegal agreements are void but all void agreements or contracts are not necessary illegal.  
Contract that is immoral or opposed to public policy are illegal in nature.
  - ❖ Unlike illegal agreements there is no punishment to the parties to a void agreement.
  - ❖ Illegal agreements are void from the very beginning agreements are void from the very beginning but sometimes valid contracts may subsequently becomes void.

### III. *On the basis of execution:-*

- (a) **Executed contract :-** A contract in which both the parties have fulfilled their obligations under the contract.  
**Example:** A contracts to buy a car from B by paying cash, B instantly delivers his car.
- (b) **Executory contract:-** A contract in which both the parties have still to fulfilled their obligations.  
**Example :** D agrees to buy V's cycle by promising to pay cash on 15<sup>th</sup> July. V agrees to deliver the cycle on 20<sup>th</sup> July.
- (c) **Partly executed and partly executory:-** A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation.  
**Example :** A sells his car to B and A has delivered the car but B is yet to pay the price. For A, it is excuted contract whereas it is executory contract on the part of B since the price is yet to be paid.  
On the basis of liability for performance:-

#### IV. On the Basis of Liability:

- (a) **Bilateral contract:-** A contract in which both the parties commit to perform their respective promises is called a bilateral contract.

**Example :** A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promise.

- (b) **Unilateral contract:-** A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation party has to perform his promise or obligation to do or forbear.

**Example :-** A wants to get his room painted. He offers Rs.500 to B for this purpose B says to A " if I have spare time on next Sunday I will paint your room". There is a promise by A to pay Rs 500 to B. If B is able to spare time to paint A's room. However there is no promise by B to Paint the house. There is only one promise.

#### Q.6 Write a difference between Void and Voidable Contract.

##### Difference Between Void and Voidable Contract

Matter	Void contract	Voidable contract
Definition	It means contract which cease to be enforceable.	It means an agreement enforceable by law by one or more parties.
Nature	Valid when made subsequently becomes unenforceable.	It remains voidable until cancelled by party.
Rights or remedy	No legal remedy.	Aggrieved party has remedy to cancel the contract.
Performance of contract	Party can't demand performance of contract	If aggrieved party does not cancel it within reasonable time, performance

#### Q.7 What is Offer? Write Essential elements for Valid Offer.

Ans:-

### OFFER

**Offer(i.e. Proposal) [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 person either to such act or abstinence, he is said to make a proposal.

To form an agreement, there must be at least two elements – one offer and the other acceptance. Thus offer is the foundation of any agreement.

*“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.”

The person who makes an offer is called **“Offeror”** or **“Promisor”** and the person to whom the offer is made is called the **“Offeree”** or **“Promisee”**.

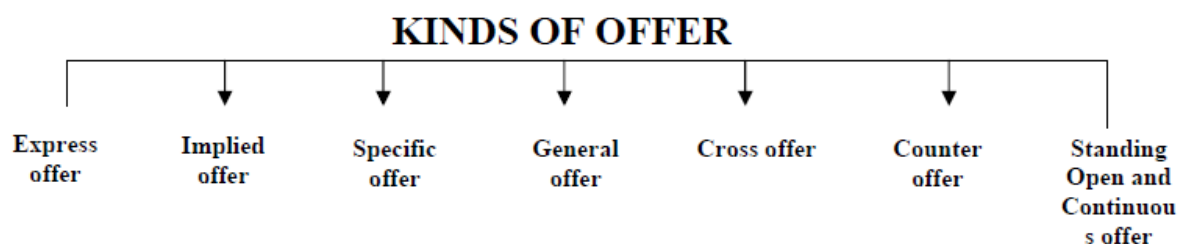
#### Example

Mr. A says to Mr. B, “Will you purchase my car for Rs.1,00,000?” In this case, Mr. A is making an offer to Mr. B. Here A is the offeror and B is the offeree.

## Essentials elements of an offer:-

- (1) *There must be two parties.*
- (2) *The offer must be communicated to the offeree.*
- (3) *The offer must show the willingness of offeror. **Mere telling the plan is not offer.***
- (4) *The offer must be made with a view to obtaining the assent of the offeree.*
- (5) *A statement made jokingly does not amount to an offer.*
- (6) *An offer may involve a positive act or abstinence by the offeree.*
- (7) *Mere expression of willingness does not constitute an offer.*  
*A tells B' that he desires to marry by the end of 2008, if does not constitute an offer of marriage by A' to B' A further adds will you marry me. Then it become offer.*

### **Q.8 Explain the Kinds of Offer.**



- I. **Express offer** - When the offeror expressly communication the offer the offer is said to be an express offer the express communication of the offer may be made by  
Spoken word  
Written word
- II. **Implied offer** – when the offer is not communicate expressly. An offer may be implied from:-  
The conduct of the parties or  
The circumstances of the case
- III. **Specific:-** It means an offer made in
  - (a) a particular person or
  - (b) a group of person: It can be accepted only by that person to whom it is made communication of acceptance is necessary in case of specific offer.
- IV. **General offer:-** - It means on offer which is made to the public in general.
  - General offer can be accepted by anyone.
  - If offeree fulfill the term and condition which is given in offer then offer is accepted.
  - Communication of acceptance is not necessary is case of general offer



- V. **Cross offer:-** When two parties exchange identical offers in ignorance at the time of each other's offer the offer's are called cross offer.

*Two cross offer does not conclude a contract. Two offer are said to be cross offer if*

1. *They are made by the same parties to one another*
2. *Each offer made in ignorance of the offer made by the*
3. *The terms and conditions contained in both the offers' are same.*

**Example :** A offers by a letter to sell 100 tons of steel at Rs.1,000 per ton. On the same day, B also writes to A offering to buy 100 tons of steel at Rs.1,000 per ton.

**When does a contract come into existence:** - A contract comes into existence when any of the parties, accept the cross offer made by the other party.

- VI **Counter offer :-** when the offeree give qualified acceptance of the offer subject to modified and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.

Legal effect of counter offer:-

- (1) Rejection of original offer
- (2) The original offer is lapsed
- (3) A counter offer result is a new offer.

In other words an offer made by the offeree in return of the original offer is called as a counter offer.

- VII **Standing, open and continuous offer:-** An offer is allowed to *remain open for acceptance over a period of time* is known as standing, open or continually offer. Tender for supply of goods is a kind of standing offer.

### Q.9 What is Acceptance? What are the Legal Rules Regarding Acceptances?

**Acceptance 2(b):-** When the person to whom the proposal is made, signifies his assent there to , the proposal is said to be accepted.

#### Legal Rules for the Acceptance

1. **Acceptance must be absolute and unqualified**

**Example:** A offers to sell his house to B for Rs. two lakhs. B accepts the offer and promises to pay the price in four installments. This is not pay the acceptance as the acceptance is with variation in the terms of the offer.

2. **Acceptance must be communicated:** Mere mental acceptance is no acceptance, But there is no requirement of communication of acceptance of general offer.

**Example** The manager of Railway Company received a draft agreement relating to the supply of coal. The manager marked the draft with the words "Approved" and put the same in the drawer of his table and forgot all about it. Held, there was no contract between the parties as the acceptance was not communicated. It may however, be pointed out that the Court construed a conduct to parties as railway company was accepting the supplies of coal from time to time.

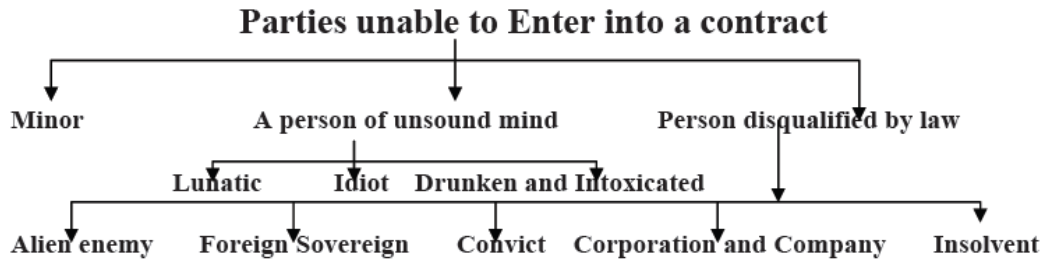
3. **Manner of acceptance**

General rule say that it must be as per the manner prescribed by offeror. If no mode is prescribed in which it can be accepted, then it must be in some usual and reasonable manner.

4. **If there is deviation in communication of an acceptance of offer,** offeror may reject such acceptance by sending notice within reasonable time. If the offeror doesn't send notice or rejection, he accepted acceptance of offer.

5. **Acceptance of offer must be made by offeror.**  
**Example :** A applied for the headmastership of a school. He was selected by the appointing authority but the decision was not communicated to him. However, one of members in his individual capacity informed him about the selection. Subsequently, the appointing authority cancelled its decision. A sued the school for breach of contract. The Court rejected the A's action and held that there was no notice of acceptance. "Information by unauthorized person is as insufficient as overhearing from behind the door".
6. **Acceptance must be communicated to offeror**
7. **Time limit for acceptance**
- If the offer prescribes the time limit, it must be accepted within specified time.
  - If the offer does not prescribe the time limit, it must be accepted within reasonable time.
- Example :** A applied (offered) for shares in a company in early June. The allotment (Acceptance) was made in late November. A refused to take the shares. Held, A was entitled to do so as the reasonable time for acceptance had elapsed.
8. **Acceptance of offer may be** expressly (by words spoken or written); or impliedly (by acceptance of consideration); or by performance of conditions (e.g.in case of a general offer)
9. **Mere silence is not acceptance of the offer**  
**Example** A offers to B to buy his house for Rs.5 lakhs and writes "If I hear no more about it within a week, I shall presume the house is mine for Rs.5 lakhs. "B does not respond. Here, no contract is concluded between A and B.
10. **However, following are the two exceptions to the above rule. It means silence amounts as acceptance of offer.**
- Where offeree agrees that non – refusal by him within specified time shall amount to acceptance of offer.
  - When there is custom or usage of trade which specified that silence shall amount to acceptance.
11. **Acceptance subject to the contract is no acceptance**  
If the acceptance has been given 'subject to the contract' or subject to approval by certain persons, it has not effect at all. Such an acceptance will not create binding contract until a formal contract is prepared and signed by all the parties.

**Q.10 Explain the Capacity of Competent parties for a contract.**



**1. Who is competent to make a contract:-**

**Section 11.** Every person is competent to contract who is of *age of majority* according to the Law to which he is subject, who is of *sound mind* and not is *disqualified from contracting* by any Law to which he is subject.

**Age of majority:-** According to *section 3 of Indian majority Act-1875* every person domiciled in Indian attains majority on the completion of 18 years of age.

**Exception: - 21 years-** in the following cases.

a. Where a guardian of a minor's person or property is appointed under the Guardian and wards Act, 1890.

b. Where minor's property has passed under the superintendence of the court of wards.

### **Person of Unsound Mind**

A person who is usually of unsound mind, but occasionally of sound mind can make a contract when he is of sound mind. Similarly, a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

- ⇒ *At time of entering into a contract, a person must be sound mind.* Law presumes that every person is of sound mind unless otherwise it is proved before court. An agreement by a person of unsound mind is void. The following are categories of a person considered as person of a unsound mind.
- ⇒ **An idiot**  
An idiot is a person who is congenital (by birth) unsound mind. His incapacity is permanent and therefore he can never understand contract and make a rational judgment as to its effects upon his interest. Consequently, the agreement of an idiot is absolutely void ab initio. He is not personally liable even for the payment of necessaries of life supplied to him.
- ⇒ **Delirious persons**  
A person delirious from fever is also not capable of understanding the nature and implications of an agreement. Therefore, he cannot enter into a contract so long as delirium lasts.
- ⇒ **Hypnotized persons**  
Hypnotism produces temporary incapacity till a person is under the effect of artificial induced sleep.

### **Person Disqualified by Law**

- ⇒ **Body corporate or company or corporation**  
Contractual capacity of company is determined by object clause of its memorandum of association. Any act done in excess of power given is ultra – virus and hence void.
- ⇒ **Alien enemy**
- An ‘alien’ is a person who is a foreigner to the land. He may be either an ‘alien friend’ or an ‘alien enemy. If the sovereign or state of the alien is at peace with the country of his stay, he is an alien friend. An if a war is declared between the two countries he is termed as an alien enemy.
  - During the war, contract can be entered into with alien enemy with the permission of central government.

### **Q.11 What is Consideration? Explain the legal rules regarding valid consideration.**

#### **MEANING**

- 1.(a) Consideration is a **quid pro quo i,e something in return** it may be –  
(i) some benefit right, interest, loss or profit that may accrue to one party or,  
(ii) some forbearance, detriment, loss or responsibility suffered on undertaken by the other party [currie V mussa]

- (b) According to Sir Frederick Pollock, “consideration is the price for which the promise of the other is bought and the promise thus given for value is enforceable.
2. **Definition [Sec 2(d)]:-** when at the desire of the Promisor, the promise or any other person.  
 (a) *has done or abstained from doing, or [Past consideration]*  
 (b) *does or abstains from doing, or [Present consideration]*  
 (c) *promises to do or abstain from doing something [Future consideration] such act or abstinence or promise is called a consideration for the promise.*
3. **Example**  
 (i) ‘P’ agrees to sell his car to ‘Q’ for Rs.50,000 Here ‘Q’s Promise to pay Rs50,000 is the consideration for P’s promise and ‘P’s promise to sell the car is the consideration for ‘Q’s promise to pay Rs.50,000.  
 (ii) ‘A’ promises his debtor ‘B’ not to file a suit against him for one year on ‘A’s agreeing to pay him Rs.10,000 more. Here the abstinence of ‘A’ is the consideration for ‘B’s Promise to pay.

### Legal Rules for valid consideration

1. **Consideration must move at the desire of the promisor.**  
 D constructed a market at the instance of District collector. Occupants of shops promised to pay D a commission on articles sold through their shops. Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the contract was void.  

*Durga Prasad v. Baldeo*
2. **Consideration may move from the promisee or any other person who is not a party to the contract. [Chinnaya’s Vs Ramayya]**  
 A owed Rs.20,000 to B. A persuaded C to sign a Pro Note in favour of B. C promised B that he would pay the amount. On faith of promise by C, B credited the amount to A’s account. Held, the discharge of A’s account was consideration for C’s promise.  

*National Bank of Upper India v. Bansidhar*
3. **Consideration may be past, present, Future:**
  - Under English law, Past consideration is no consideration.
  - Present consideration :- cash sale
  - Future or executory consideration:- A Promises to B to deliver him 100 bags of sugar at a future date . B promise to pay first on delivery.
4. **Consideration should be real and not illusory. Illusory consideration renders the transaction void consideration is not valid if it is.**
  - (i) Physically impossible      (ii) Legally not permissible
  - (iii) Uncertain                      (iv) illusory (*fulfillment of a pre existing obligation*)
5. **Must be legal:-**  
 Consideration must not be unlawful, immoral or opposed to public policy.

**Q.12 What is Free Consent? What are the Flaws in free consent?**

**Ans:-**

**FREE CONSENT**

**According to section 13.** Two persons are said to have consented when they agree upon same thing in the same sense.

In English law, this is called '**consensus – ad – idem**'

**Effect of absence of consent:**

- ⇒ When there is no consent at all, the agreement is **void – ab – initio**.  
It is not enforceable at the option of either party

**Example 1:-**

X have two car one Maruti car and one Honda city car. Y does not know that X has two cars Y offers to buy car at Rs.50,000. Here, there is no identity of mind in respect of the subject matter. Hence there is no consent at all and the agreement is **void – ab – initio**.

**Example 2:-**

An Illiterate woman signed a gift deed thinking that it was a power of attorney – no consent at all and the agreement was void – ab – initio [ **Bala Devi V S. Manumdats** ]

**Free consent**

- ⇒ Consent is said to be free when it is not caused by [ **Section 14** ]
- (a) coercion [ **Section 15** ]
  - (b) Undue influence [ **Section 16** ]
  - (c) Fraud [ **Section 17** ]
  - (d) Misrepresentation [ **Section 18** ]
  - (e) Mistake [ **Section 20, 21,22** ]

**Coercion [Section 15]**

- (a) Committing any act which is forbidden by the **IPC**
- (b) Threatening to commit any act which is forbidden by the **IPC**.
- (c) Unlawful detaining of any property or
- (d) Threatening to detain any property.

**Undue influence [Section 16]**

**Meaning of undue influence :-** dominating the will of the other person to obtain an unfair advantages over the others.

- (a) where the relation subsisting between the parties must be such that one party is in **position to dominate the will** of the other.
- (b) The dominant party **use** his position.
- (c) Obtain an **unfair advantage** over the other .

## Fraud (17)

- ⇒ The term fraud means a false representation of facts made willfully *with a view to deceive the other party*.
- ⇒ Sec.17- fraud means any act committed by a party to a contract or with his connivance or by his agent with intent to deceive another party there to or his agent or to induce to enter into contract.

### Essentials of fraud :-

- (a) By a party to the contract
- (b) There must be representation – [an opinion a statement of expression – does not fraud].
- (c) The representation must be false.
- (d) Before conclusion of contract.
- (e) The misrepresentation must be made willfully.
- (f) The misrepresentation must be made with a view to deceive the other party.

## Misrepresentation (section 18)

Misrepresentation is when a party (person) asserts something which is not true though he believes is to be true. In other words misrepresentation is a false representation made innocently. An agreement is said to be influenced by misrepresentation if all the following conditions are satisfied.

- (a) The party makes a representation of a fact [**The representation by a stranger (By anyone with his connivance or by agent)**] to the contract does not affect the validity of the contract.
- (b) The misrepresentation was made *innocently* i.e. if was not made with a view to deceive the other party.
- (c) The other party has actually acted believing the misrepresentation to be true.

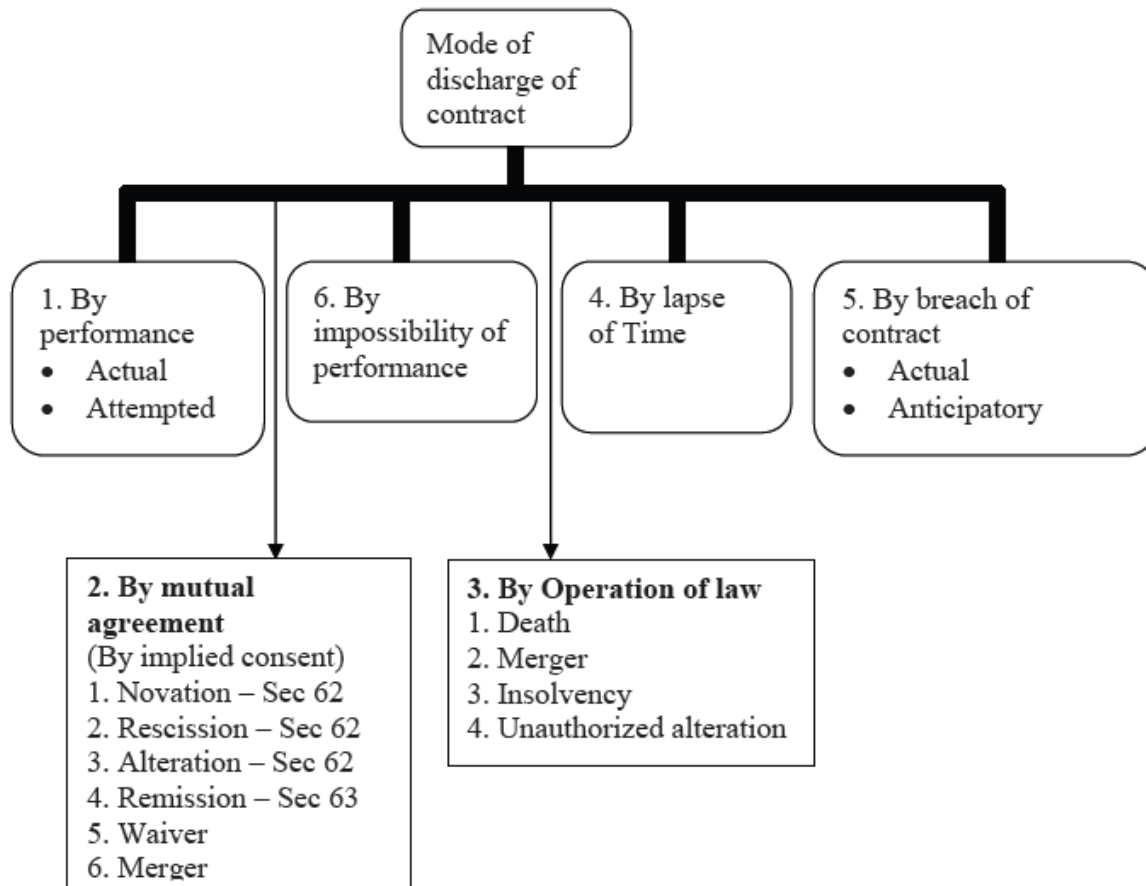
### Misrepresentation include:-

- Unjustified statement of facts – positive assertion – Believe true really not true no basis misrepresentation
- Breach of duty.
- Inducing other to make mistake as to quality or nature of subject matter.

### Q.13) In what circumstances contract will be discharge?

Ans:- **DISCHARGE OF A CONTRACT**

Discharge of a contract means termination of contractual relation between the parties to a contract in other words a contract is discharged when the rights and obligations created by it are extinguished (i.e. comes to an end).



### Discharge by performance

fulfillment of obligations by a party to the contract within the time and in the manner prescribed in the contract.

- (a) **Actual performance** – no party remains liable under the contract. Both the parties performed.
- (b) **Attempted performance or tender**:- Promisor offers to perform his obligation under the contract but the promisee refuses to accept the performance. It is called as attempted performance or tender of performance
  - But the contract is not discharged.

### Discharge by mutual agreement

- (a) **Novation [Sec 62]** – Novation means substitution of a new contract in the place of the original contract new contract entered into in consideration of discharge of the old contract. The new contract may be.
  - Between the same parties (by change in the terms and condition)
  - Between different parties (the term and condition remains same or changed)



### Discharge by operation of law

- (a) **Death** :- involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent.  
**Example** : A promises to perform a dance in B's theatre. A dies. The contract comes to an end.
- (b) **Insolvency**:- when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.  
**Example**: A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire which leaves nothing to sell, A applies for insolvency and is adjudged insolvent. Contract is discharged.
- (c) **By unauthorized material alteration** – without the approval of other party – comes to an end – nature of contract substance or legal effect.  
**Example** : A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as Rs.50,000. A is liable to pay only Rs.5,000.
- (d) **Merger**: When an inferior right accruing to a party in a contract mergers into a superior right accruing to the same party, *then the contract conferring inferior right is discharged.*  
**Example**: A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

Q.14) What is Quasi Contract?

Ans:-

### QUASI CONTRACT

It means a contract which lacks one or more of the essentials of a contract.

Quasi contract are declared by law as valid contracts on the basis of *principles of equity* i.e. *no person shall be allowed to enrich himself at the expense of another the legal obligations of parties remains same.*

#### Nature of Quasi contracts:-

- (a) A quasi contract does not arise from any formal agreement but is imposed by law.
- (b) Every quasi contract based upon the **principle of equity** and **good conscience**.
- (c) A quasi contract is always a right to money and generally though not always to a liquidated sum of money.
- (d) A suit for its breach may be filed in the same way as in case of a complete contract.
- (e) The right grouted to a party under a quasi contract is not available to him against the whole world but against particular person(s) only.
- (f) A suit for breach of a quasi contract may be filed in the same way as in case of an ordinary contract
- (g) Although there is no contract between the parties under a quasi contracts, yet they are put in the same position as if he were a contract between them .

Q.15) What are the Essential Elements of Valid Contract of Sale?

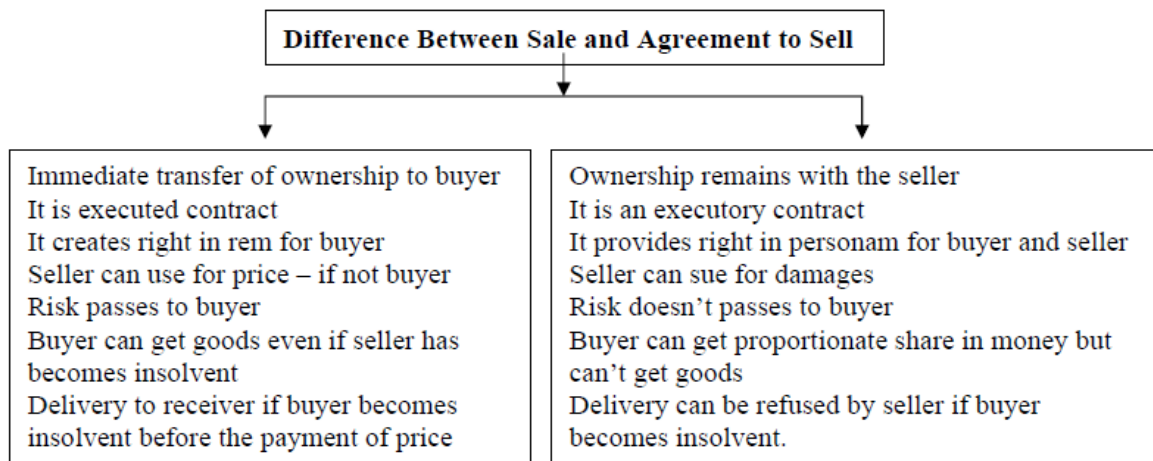
Ans:-

## ESSENTIAL ELEMENTS OF VALID CONTRACT OF SALES

*The following are the essentials of valid contract of sale:*

- ⇒ **There must be two parties, one seller and other buyer.**
  - Seller and buyer must be different.
  - Part owner can sell goods to another part owner.
  - Partners are not regarded as separate persons for the purpose of sale of the partnership property. They are the joint owners of the goods and as such they cannot be both sellers and buyers [State of Gujarat v. Ramanlal S & W. (1965)]. But, a partner may buy goods from the firm or sell goods to the firm.
- ⇒ **There must be movable goods as subject matter of contract.**
- ⇒ **There must be a transfer of property in goods. It means general property. (i.e. ownership)**
- ⇒ **There must be price involved. Price means money consideration for sale of goods.**
  - Exchange of goods for goods is barter.
  - If Exchange is for partly goods and partly for money it is sale.
- ⇒ **All essential elements of valid contract must be observed.**
- ⇒ **The contract of sale can be entered into, expressly or impliedly.**

Q.16) What is the Difference between Sale and Agreement to Sell



Q.17) What is the Difference between Sale and Hire Purchase?

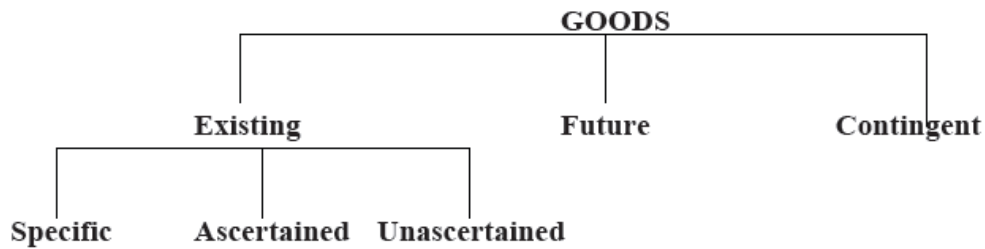
Ans:-

Difference between Sale and Hire Purchase		
Metter	Sale	Hire Purchase
Meaning	Property in goods is transferred from seller to buyer immediately	Agreement where hirer uses goods by paying regular installment and having option to purchase goods on payment of last installment
Applicable Act	Sale of goods Act, 1930	Hire Purchase Act, 1972
Parties	Buyer and seller	Hirer and Hire vendor
How it made?	Orally or in writing	Only in writing – Valid
Transfer of ownership	Immediately buyer becomes owner of goods	When hirer paid last installment
Risk of loss	Risk of loss passes to buyer	Ownership not transferred hire vendor is liable
Return of goods	Buyer can't return goods	Anytime terminate agreement and return
Legal effect of Installment Sale tax	Buyer remain liable to pay unpaid installment only Payable immediately	Each installment paid is treated as hire charges When all installment is paid

Q.18) Explain the Term “Goods”? Write down classification of Goods.

### Goods – Sec 2 (7)

- ⇒ Goods mean every kind of *movable property*.
- ⇒ Other than actionable claims and money, and it includes.
- ⇒ stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale.
- ⇒ You may notice that ‘money’ and ‘actionable claims’ have been expressly excluded from the term ‘goods’. **‘Money’ means the legal tender. ‘Money’ does not include old coins and foreign currency.** They can, therefore, be sold or bought as goods. Sale and purchase of foreign currency is, however, also regulated by the foreign Exchange Management Act,
- ⇒ ‘Actionable claims’, like debts, are things which a person cannot make use of, but which can be claimed by him by means of a legal action. Actionable claims cannot be sold or purchased like goods, they can only be assigned, as per the provisions of Transfer of property Act.
- ⇒ Grass, growing crops, trees to be cut and their log wood to be delivered, malba of a building to be demolished, etc. are goods. Similarly, things like goodwill, copyright, trade mark, patents, water, gas electricity are all goods and may be the subject matter of a contract of sale.



### Types of Goods

The goods may be classified into following categories:

#### Existing goods

- Existing goods are the goods, which are owned and possessed by the seller at the time of sale. Existing goods may be of three types;

##### (a) Specific Goods:

- The goods, which are identified and agreed upon by the parties at the time of contract of sale.
- It should be noted that the goods must be both identified and agreed upon.

##### (b) Unascertained Goods:

- These are the goods, are not identified and agreed upon at the time of the contract of sale.

##### (c) Ascertained Goods:

- These are the goods, which are identified after the formation of contract of sale. When the un-ascertained goods are identified and agreed upon by the parties, the goods are known as ascertained goods.

#### Future Goods

- ⇒ Future goods are those goods, which do not exist at the time of the contract of sale.
- ⇒ These goods are to be manufactured or acquired by the seller after the making of the contract of sale.
- ⇒ Future goods cannot be sold, but there can only be an agreement to sell.

##### *Example:*

A, a manufacturer agrees to sell 5 tables and 50 chairs to B at Rs.10,000. B agrees to purchase it. However, tables and chairs are yet to be manufactured by A.

#### Contingent goods

- ⇒ It is a kind of future goods.
- ⇒ It is goods, the acquisition of which is contingent upon the happening or non-happening of an uncertain event.

Q.19) Write a difference between Future Goods and Contingent Goods.

Ans:-

Basis	Futures Goods	Contingent Goods
1. Meaning	Goods that are yet to be manufactured produced or acquired by the Seller after making contract of sale.	Goods, the acquisition of which by the Seller depends upon a contingency, which may or may not happen.
2. Element of uncertainty	Acquisition of Future Goods does not depend upon and uncertainty.	The procurement of Contingent Goods is dependent upon an uncertain event.
3. Scope	Future Goods do not include contingent Goods because of the element of certainty.	They are wider in scope, it includes future Goods.
4. Effect of Contract	Where by a contract of Sale, the Seller purports to effect a present sale of future Goods, the contract operates as an "agreement to sell" the Goods[Sec.6(3)]	There may be a "Contract for Sale" of Goods, the acquisition of which by the Seller depends upon a contingency which may or may not happen [Sec.6 (2)]
5. Example	B agrees to buy the entire crop of wheat that would yield in S's farm, at the rate of Rs.1000 per quintal.	A agrees to sell to B a certain painting only if C, its present owner, sells it to him. The sale is contingent upon the sale by C.

Q.20) What is Conditions and Warranties?

### CONDITIONS AND WARRANTIES

- ⇒ Generally, at the time of sale, the seller makes some representation, statements of stipulations for the praise of his goods. Some of representations are in nature of opinion others are in nature of facts. Representation as to fact which becomes a part of contract of sale is called as stipulation.
- ⇒ Stipulation may be condition or warranty depends upon its importance in relation to contract.
- ⇒ Stipulation which is *essential to the main purpose of contract is known as condition*. Breach of condition gives the aggrieved party right to terminate the contract.
- ⇒ Stipulation which is *collateral to the main purpose of the contract is warranty*. Breach of warranty gives rise to the aggrieved party right to claim damages but contract cannot be terminated.
- ⇒ The conditions and warranties *may be express or implied*.
- ⇒ Express conditions and warranties are those, which the parties agree expressly, i.e. orally or in writing.
- ⇒ Implied conditions are those, which are implied by the law in the absence of any agreement to the contrary.

### IMPLIED CONDITIONS

*The following are the implied conditions which are contained in the Sales of Goods Act:*

#### Conditions as to title – sec 14(a)

- ⇒ There is an implied condition on the part of the seller that
  - In the case of sale, the seller has a right to sell the goods, and
  - In the agreement to sell, the seller will have a right to sell the goods at the time of passing of ownership in goods.
- ⇒ If the title of seller out to be defective, the buyer must return the goods to the true owner and recover the price from the seller.

#### Conditions as to description – Sec 15

- ⇒ Where the goods are sold by description, there is an implied condition that the goods shall correspond to the description.

#### Conditions as to merchantability

- ⇒ Where goods are *bought by description* from a seller, who deals in goods of that description, there is an implied conditions that the goods shall be of merchantable quality.

#### Condition as to wholesomeness

- ⇒ In the case of *eatable and food – stuff*, there is an implied condition that the goods shall be wholesomeness, i.e., free from any defect which renders them *unfit for human consumption*.

#### *Example:*

A Purchased milk from B, a milk dealer. The milk contained typhoid germs. A's wife on taking the milk got infected and died. Held, A was entitled to get damages – Frost vs Aylesbury Dairy Co. Ltd.

## IMPLIED WARRANTIES

*The following are the implied warranties which are contained in the Sales of Goods Act:*

#### Warranty as to quiet possession – Sec 14

- ⇒ In the absence to any contract showing contrary intention, there is an implied warranty that the *buyer shall have and enjoy quiet possession of the goods*. If the buyer is disturbed in the enjoyment of the goods, he can claim damages from the seller.

#### Warranty against encumbrances – Sec 14

- ⇒ Unless the circumstances of the case are such as to show a contrary intension, there is an implied warranty that the *goods shall be free from any charge or encumbrance* in

favour of any party not declared to the buyer before or at the time contract is made. However, there will not be any such warranty if charge is declared to buyer at the time of sale.

**Warranty as to quality and fitness by usage of Trade – Sec 16**

⇒ An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.

**Warranty to disclose the dangerous nature of goods**

⇒ In case of sale of dangerous goods, the *seller is under an obligations to warn the buyer about the probable danger*. Failure to do so will make the seller liable to pay damages.

**Example :**

A sold a tin of disinfectant to B, knowing that it was likely to be dangerous to the tin, whereupon disinfectant powder went into her eyes, causing her injury. Held, A was liable in damages to B, as he failed to warn B of the probable danger.

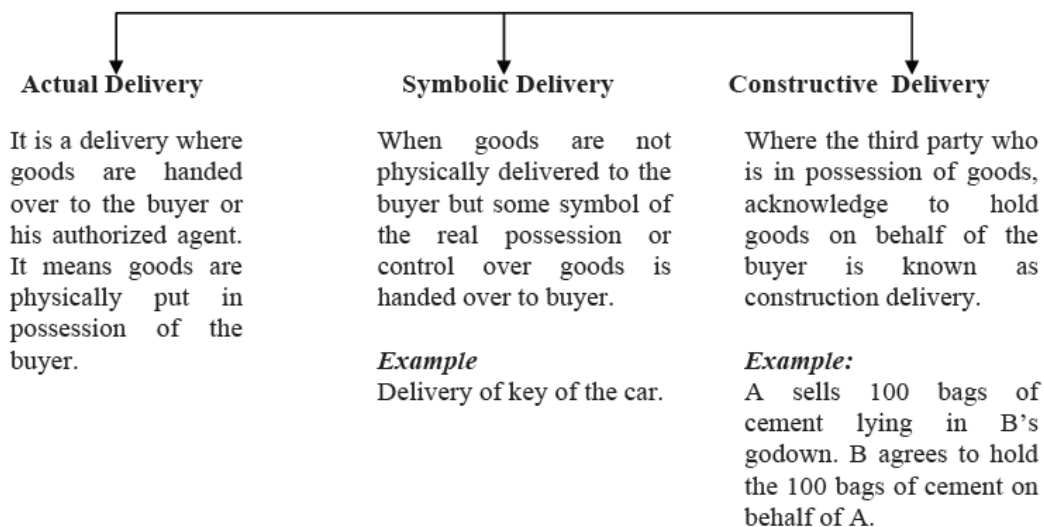
Q.21) Write a Difference between Conditions and Warranties.

Difference between Condition and Warranty		
Matter	Condition	Warranty
Stipulation	Essential to main purpose of contract	Collateral (subsidiary) to main purpose of contract.
If breach?	Buyer has right to cancel contract	Buyer has no right to cancel the contract . Can claim damages
Treatment	Breach of condition may be treated as breach of warranty	Breach of warranty can't be treated as breach of condition

Q.22) What is Delivery of Goods? Explain the types of Delivery.

1. **Meaning Sec.2(2):** Delivery means voluntary transfer of possession from one person to another.
2. **Duty of Seller Sec. 31:** It is the duty of the Seller to deliver the goods and of the buyer to accept and pay for them in accordance with the contract of Sale.
3. **Mode of delivery : Sec. 33:** Delivery of Goods sold may be made by –
  - (a) doing anything which the parties agree shall be treated as delivery ; or
  - (b) which has the effect of putting the Goods in the possession of the Buyer or of any person authorized to hold them on his behalf.

## TYPES OF DELIVERY



### Forward Delivery

Where delivery is to be made in future, and not at the time contract is entered into.

Q.23) What are the rules regarding Delivery?

Ans:-

### Rules as to Delivery [Sec. 36]

#### Place of delivery:

Situation	Place where goods are to be delivered
If contract specified the place of delivery Contract does not specify the place of delivery;	At the place specified At the place at which goods are at the time of sale
In case of sale In case of agreement of sell (i) In respect of existing goods (ii) In respect of future goods	At the place at which goods are at the time of agreement of sell. At the place at which goods are manufacture, produce or acquire

#### Time of Delivery

- ⇒ If the contract specified time of delivery, goods shall be delivered within such time.
- ⇒ If no time is specified in contract as to time of delivery of goods, it should be delivered within reasonable time.



### **Delivery when the Goods in Possession of third party 36(3):**

Unless and until such third person acknowledge to the buyer that he holds the goods on his behalf

However this provision shall not affect the operation of the issue or transfer of any documents of the title of the goods.

### **Delivery of Wrong quantity Sec 37**

- ⇒ *If the seller has delivered excess quantity, the buyer has the following options:*
- To accept the whole of the goods delivered to him.
  - To reject the whole of the goods delivered of him.
  - To accept contracted quantity and reject the excess.
- ⇒ *Seller has delivered short quantity, buyer has following options.*
- To accept the goods delivered to him.
  - To reject whole quantity delivered to him.
- ⇒ *Right to reject the goods in excess of the contract does not apply where the variation is negligible.*
- ⇒ *Further, the right to reject the goods is not similar to the right to cancel the contract. If the buyer rejects the goods (either because they are less than or in excess of the quantity contracted for), the seller has a right to tender again the contract quantity and the buyer is bound to accept the same.*

### **Delivery of Mixed Quality – Quantity**

- ⇒ The seller is bound to deliver goods of exact quality – quantity otherwise buyer may:
- Reject the whole.
  - Reject the goods not complying with quality or quantity and accept the rest.

### **Delivery by Installment Sec 38**

- ⇒ Delivery by installment is not valid except when the contract provides so or buyer accepts the delivery in installment.

### **Delivery to Carrier or Wharfinger – Sec 39**

- ⇒ Delivery to carrier or wharfinger amounts as delivery to buyer if the following conditions satisfy:
- Buyer has made reasonable contract with carrier.
  - Seller is required to give notice to buyer to enable him to insure goods. If not to do then his risk.

## Acceptance of Delivery – Sec 42

- ⇒ Delivery doesn't mean acceptance of goods, Buyer has deemed to have accepted the goods under the following circumstances:
- When he intimates the seller about acceptance of goods.
  - After receipt of goods, he does some act of affirmation.
  - When he doesn't inform seller about rejection of goods within a reasonable time.

Q.24) Who is called as Unpaid Seller? What are his rights?

Ans:-

## UNPAID SELLER

### Section 45

*A seller of goods is deemed to be unpaid in the following cases:*

- The price must be due but not paid. (When the *whole of the price* has not been paid or tendered)
- A negotiable instrument, like cheque, bill of exchange etc., was received, but the same has been dishonored.
- Seller who has obtained a decree for the price of the goods will also be an unpaid seller, if the decree has not been satisfied.
- When the seller has been paid the large amount but small portion of payment remains to be paid.
- Seller must have an immediate right of action for the price.

### Right of an Unpaid Seller

*Unpaid seller has the right against goods as well as against the buyer:*

⇒ *Rights of unpaid seller against the goods:*

- Where ownership is transferred
  - ✓ Right of lien – Sec 47 – 49
  - ✓ Right to stoppage in transit – Sec 50 – 52
  - ✓ Right to resale of the goods
  - ✓ Where ownership is not transferred to the buyer, seller has the right to with hold delivery of goods.

### Right of an unpaid seller against the goods Sec 46

The ownership has not been transferred.

Conditions Unpaid Seller + ownership not transferred.

Consequences Lawfully refuse to deliver the goods to the buyer until he is paid the price.

Buyer cannot hold the seller liable for non delivery of goods.

### Seller's Lien Sec.47

#### *Condition for exercising lien*

Condition – Unpaid seller – actual possession

Buyer not paid the price of the good. The unpaid seller can exercise lien even through.

The property is goods has passed to the buyer

He is in the possession of the goods as an agent or bailee for the buyer.

#### **Right of Lien**

⇒ It means the right to retain the possession of goods until full price is received.

⇒ Seller can exercise his right of lien on the following two conditions:

- He must be in possession of the goods.
- He is the unpaid seller.

⇒ If buyer becomes insolvent, lien can be exercised by unpaid seller.

### Part delivery Sec. 48

Part delivery of goods does not disentitle the unpaid seller from exist lien on the remainder goods.

### Right of Stoppage in Transit – Sec 50 to 52

#### **Right of stoppage goods in transit Sec 50**

⇒ The right of stoppage in transit is an extension of the right of lien.

⇒ The right of lien is a right to retain possession, whereas right of stoppage in transit is a right to regain possession.

⇒ The right of stoppages in transit can be exercised, if the goods are in transit, and the buyer has become insolvent in the meantime.

### Right of Resale Sec 54

⇒ In case of perishable goods, unpaid seller can resale the goods if following conditions satisfied.

- Buyer fails to pay the price within reasonable time.
- Seller is not required to give notice of re – sale.

⇒ In case of other goods (not perishable) unpaid, the seller can resale goods if the following conditions are satisfied:

- Seller has exercised his right of lien or stoppage of goods in transit.
- Seller has given notice to buyer to pay the price within reasonable time and buyer fails to pay the price.

### Q.25) What is Partnership? What are the Characteristics of Partnership?

**Ans:-** Section 4 of the Indian Partnership Act defines it as ‘the relation between persons who have agreed to share the profits of a business cancellation by gfdg any of them acting for all’ Persons who have entered into partnership with one of other are called individually “partners” and collectively “a firm”, and the name under which their business is carried on, is called the “firm name”.

#### CHARACTERISTICS OF PARTNERSHIP

1. **Relationship:** Partnership is the abstract relationship between partners
2. **Two or More Persons:** As no one can be a partner with himself, there must be at least two persons. The maximum number of members is 10 for a partnership carrying on banking business and 20 for a partnership carrying on any other business.
3. **Agreement or Deed:** Partnership arises out of an agreement but not out of status. Such agreement, also called as deed, may be express or implied from the conduct of the parties. It may be oral or written. It contains details relating to—
  - Name of the firm and the names of the partners,
  - Nature and place of business,
  - The date of commencement and the duration of partnership,
  - Capital and banking account,
  - Sharing of profits and losses,
  - Management,
  - Accounts
  - Arbitration etc.
4. **Business:** The object of the partnership is to carry on any business, profession, vocation, trading or calling. Such business must be lawful. Mere holding of property in common is not partnership, e.g. co-ownership.
5. **Profit Sharing:** Sharing of profits is essential though it does not mean that all those who participate in profits are necessarily partners.
6. **Carried on by all or any of them acting for all:** Each partner acts as an agent as well as a principal. Each one can act in the course of business and bind the other partners by his acts. As such, he can be called an agent. Since he is also bound by the acts of the other partners, he can be called the principal. Thus, the law of partnership is a branch of the general law of agency as every partner has implied power to bind other partners for the acts of the firm, done in the course of conduct of the business.

### Q.26) What are the kinds of Partners?

#### Ans:- KINDS OF PARTNERS

Following are different kinds of partners

1. **Actual or Active Partner:** An actual partner is one who actively participates in the conduct of the business of the partnership.
2. **Dormant or Sleeping Partner:** He is a partner who is not known to third parties as such. He does not take active part in the conduct of business. He occupies the position of an undisclosed principal. Hence, third parties can sue him on discovering that he is a partner. While he has access to accounts and examine and verify them, he has not duties to perform. Hence no notice of his retirement to the public is necessary nor the firm is dissolved when he becomes insane.
3. **Partner by Estoppel:** Where a person causes, by his conduct, another to believe him to be a partner and on that belief such other person gives credit to the firm, he is estopped from denying that he is a partner.

**Example:** X, Y and Z are partners of a firm. X, in the presence and within the hearing of A, represents to D that A is a partner of their firm. A does not contradict this representation. A, on faith of that representation, lent Rs. 5000 to the firm, A, is liable as a partner.

4. **Partner by Holding Out** : Where a person represents himself or allows others to represent him as a partner of a particular firm, he becomes liable to all those who act and lend money to the firm, on the faith of such representation.

**Example:** A, represents himself as a partner of a particular firm. D on the faith of the representation, lends credit to the firm. A becomes liable.

### Q.27) What is the procedure for Registration of Partnership Firm?

#### Ans:- REGISTRATION OF FIRMS

The Partnership Act does not provide for the compulsory registration of firms. It has left it to the option of the firms to get themselves registered. But indirectly, by creating certain disabilities from which an unregistered firm suffers, it has made the registration of firms compulsory.

#### PROCEDURE FOR REGISTRATION

The registration of a firm may be effected at any time by filling an application in the form of a statement, giving the necessary information, with the Registrar of Firms of the area.

The application for registration of a firm shall be accompanied by the prescribed fee. It shall state:

- (a) the name of the firm
- (b) the place or principal place of business of the firm
- (c) the names of other places where the firm carries on business
- (d) the date when each partner joined the firm
- (e) the names in full and permanent address of the partners
- (f) the duration of the firm.

The statement shall be signed by all the partners or by their agents specially authorized in this behalf [Sec. 58(1)]. It shall also be verified by them in the prescribed manner [Sec. 58(2)].

When the Registrar is satisfied that the above provisions have been duly complied with, he shall record an entry of the statement in the Register of Firms (maintained by Registrar of Firms in respect of each registered firm for recording the necessary information relating to that firm) and file the statement (Sec. 59). He shall then issue under his hand a certificate of registration. Registration is effective from the date when the Registrar files the statement and makes entries in the Register of Firms.

#### EFFECTS OF NON-REGISTRATION (SEC. 69)

1. **Suits between partners and firm:** A person suing as a partner of an unregistered firm cannot sue the firm or any partners of the firm to enforce a right from a contract or conferred by the Partnership Act.
2. **Suits between firm and third parties:** An unregistered firm cannot sue a third party to enforce a right arising from a contract until –
  - the firm is registered, and
  - the names of the persons suing appear as partners in the Register of Firms [Sec. 69(2)]
3. **Claim of set-off:** An unregistered firm or any partner thereof cannot claim a set-off in a proceeding instituted against the firm by a third party to enforce a right arising from a contract, until the registration of the firm is effected [Sec. 69(3)]

### Q.28) What are the Rights of Partners?

#### Ans:- RIGHTS OF A PARTNER

##### 1. Right to take part in Business

The partnership agreement usually provides the mode of the conduct of the business. Subject to pay such agreement between the partners, every partner has a right to take part in the conduct of business [Sec. 12(a)]. This is based on the general principal that partnership business is the common business of all the partners.

##### 2. Right to be Consulted

Every partner has an inherent right to be consulted in all matters affecting the business of the partnership and express his views before any decision is taken by the partners.

### **3. Right of Access to Accounts**

Subject to contract between the partners, every partner has a right to have access to and inspect and copy any of the books of the firm.

### **4. Right to Share in Profit**

In the absence of any agreement, the partners are entitled to share equally in the profits earned and are liable to contribute equally to the losses sustained by the firm.

### **5. Right to Interest on Capital**

The partnership agreement may contain a clause as to the right of the partners to claim interest on capital at a certain rate. Such interest, subject to contract between the partners, is payable only out of profits, if any, earned by the firm.

### **6. Right to Interest on Advances**

Where a partner makes, for the purposes of the business of the firm, any advance beyond the amount of capital, he is entitled to interest on such advance at the rate of six per cent annum. Such interest is not only payable out of the profits of the business but also out of the assets of the firm.

### **7. Right to be Indemnified**

A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances. Such acts of the partner bind the firm. If as a consequence of any such act, the partner incurs any liability or makes any payment, he has a right to be indemnified.

### **8. Right to the Use of Partnership Property**

Subject to contract between the partners, the property of the firm must be held and used by the partners exclusively for the purposes of the business of the firm. No partner has a right to treat it as his individual property. If a partner uses the property of the firm directly or indirectly for his private purpose, he must account to the firm for the profits which he may have earned by the use of that property.

### **9. Right of Partner as Agent of the Firm**

Every partner for the purposes of the business of the firm is the agent of the firm.

### **10. No New Partner to be Introduced**

Every partner has a right to prevent the introduction of a new partner unless he consents to that or unless there is an express term in the contract permitting such introduction. This is because partnership is founded on mutual trust and confidence.

### **11. No Liability before Joining**

A person who is introduced as a partner into a firm is not liable for any act of the firm done before he became a partner.

### **12. Right to Retire**

A partner has a right to retire (a) with the consent of all other partners, or (b) in accordance with an express agreement between the partners, or (c) where the partnership is at will, by giving notice to all the other partners of his intention to retire.

### **13. Right of Outgoing Partner to Share in the Subsequent Profits**

Where a partner has died, or has ceased to be a partner by retirement, expulsion, insolvency, or any other cause, the surviving or continuing partners may carry on the business with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate. In such a case, legal representative of the deceased partner or the outgoing partner is entitled to such share of the profits as is proportionate to his share in the property of the firm.

## **Q.29) What are the Duties of Partners?**

### **Ans:- DUTIES OF A PARTNER**

The partners must act with utmost good faith as the very basis of partnership is mutual trust and confidence. According to Sec. 9, which deals with the general duties of partners, partners are bound –

(a) to carry on the business of the firm to the greatest common advantage,

(b) to be just and faithful to each other, and

(c) to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

The other duties are spread over the Partnership Act. These duties are summed as under:

**1. To carry on business to the greatest common advantage**

Every partner is bound to carry on the business of the firm to the greatest common advantage. He is bound, in all transactions affecting the partnership, to do his best in the common interest of the firm.

**2. To observe faith**

Partnership is a fiduciary relation. Every partner must be just and faithful and observe utmost good faith towards every other partner of the firm.

**3. To indemnify for fraud**

Every partner is bound to indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

**4. To attend diligently**

It is the duty of every partner to attend diligently to his duties in the conduct of the business of the firm [Sec. 12b], and to use his knowledge and skill to the common advantage of all the partners.

**5. Not to claim remuneration**

A Partner is not entitled to receive any remuneration in any form for taking part in the conduct of the business of the firm. It is however, usual to allow some remuneration to the working partners provided there is a specific agreement to that effect.

**6. To share losses**

It is the duty of every partner to contribute to the losses of the firm. In the absence of an agreement to the contrary, the partners are bound to contribute equally to the losses sustained by the firm. An agreement to share profits implies an agreement to share losses also.

**7. To indemnify for willful neglect**

Every partner is bound to indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

**8. To hold and use property of the firm exclusively for the firm**

It is the duty of every partner of the firm to hold and use the property of the firm exclusively for the purposes of the business of the firm

**9. To account for personal profits**

If a partner derives any benefit, without the consent of the other partners, from partnership transactions, he must account for it and pay it to the firm. This is because the relationship between partners is a fiduciary relationship and no partner is entitled to make any personal profit.

**10. To account for profit in competing business**

A partner must not carry on any business of the same nature as competing with that of the firm. If he does that he is bound to account for and pay to the firm all profits made by him in that business.

**11. To act within authority**

Every partner is bound to act within the scope of his actual or implied authority. Where he exceeds the authority conferred on him and the firm suffers a loss, he shall have to compensate the firm for any such loss.

**12. To be liable jointly and severally**

Every partner is liable, jointly with all the other partners and also severally, for all the acts of the firm done while he is a partner.

**13. Not to assign his rights**

A partner cannot assign his rights and interest in the firm to an outsider so as to make him the partner of the firm. He can, however, assign his share of the profit and his share in the assets of the firm.

**Q.30) What are the Conditions Regarding Dissolution of Partnership firm?**

**Ans:- DISSOLUTION OF FIRMS**

Section 39 of the Indian Partnership Act lays down that the dissolution of partnership between all the partners of a firm is called the “dissolution of the firm”. This is different from the dissolution of partnership. A partnership may be dissolved without dissolution the firm. But dissolution of firm involves dissolution of partnership. In the firm of A, B and C, if C dies or retires, the firm will be dissolved. But A

and B may take in D and continue doing the business. This new firm of A, B and D is called the new or reconstituted firm.

### **Dissolution of Partnership on the happening of certain contingencies**

A partnership is dissolved by ---

- Ø The death of the partner
- Ø The completion of the adventure of partnership
- Ø The insolvency of a partner, and
- Ø The retirement of a partner

In all these cases, the remaining partners, may constitute the firm. Hence, dissolution of partnership does not necessarily involve dissolution of the firm. If they do not continue, the firm is dissolved automatically.

### **Dissolution of Firm**

A partnership between all the partners is dissolved in the following ways

- 1) **Dissolution by Agreement:** (a) By mutual consent of all the partners, or (b) in accordance with the contract entered into by them.
- 2) **Compulsory Dissolution:** (a) by the insolvency of all the partners except one, or (b) by the business of the partnership becoming illegal or unlawful by subsequent events.
- 3) **Dissolution of Partnership at Will:** The firm may be dissolved by any partner giving a notice to the other partners of his intention to dissolve the firm. But the notice must be in writing and unambiguous. Once given, it cannot be withdrawn. The firm is dissolved from the date mentioned in the notice, or if the date is not mentioned, from the date of communication of the notice.
- 4) **Dissolution through Court:** A partnership for a fixed period will be dissolved by a court where it is not dissolved for the reasons mentioned above.

At the suit of a partner, a firm may be dissolved on any of the following grounds:

- (a) That a partner has become of unsound mind,
- (b) That a partner has become permanently incapable of performing his duties,
- (c) That a partner is guilty of conduct which is likely to affect prejudicially, the carrying on of the business.
- (d) That a partner persistently commits breach of agreement. For instance, a firm is dissolved when: (i) a partner commits breach of trust, or (ii) takes away the partnership books etc.
- (e) That a partner has transferred his interest to a third party or allowed his share to be charged or sold in the recovery of arrears of land revenue
- (f) That the business of the firm cannot be carried on, save at a loss, or
- (g) On any other ground which renders it just and equitable that the firm should be dissolved.