

**QUESTION NO. 1****(a) IMPLIED CONTRACT**

See Paper 2014 Question No. 1 & Paper 2017 Question No. 1

**(b) CONSIDERATION**

See Paper 2017 Question No. 2

**(c) VOIDABLE CONTRACT**

See Paper 2014 Question No. 1 & Paper 2017 Question No. 1

**(d) CROSSED CHEQUE**

Cheques containing two parallel transverse lines across the face of the cheque, and on presentment to bank, the payment of such cheque cannot be obtained by the payee, it is rather collected by the payee's bank, it is called a cross cheque.

**QUESTION NO. 2****EMPLOYER'S LIABILITY FOR COMPENSATION:****(1) Employer's is Liable for Death or Injury:**

If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation.

**(2) When Employer not Liable for Death or Injury:**

The employer shall not be so liable:

- (a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding four days.
- (b) In respect of any injury, not resulting in death, caused by an accident which is directly attributable to:
  - (i) the workman having been at the time thereof under the influence of drink or drugs, or
  - (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
  - (iii) the will removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.
- (c) If the accident causing injury to or death of a workman did not arise out of and in the course of his employment, or
- (d) If the workman has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person.

**(3) Employer's Liability for Occupational Disease:**

If a workman employed in any employment specified in Part A of Schedule III, or if a workman, whilst in the service of an employer for a continuous period of not less than six months in any employment specified in Part 8 of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident arisen out of and in the course of the employment, unless the employer proves the contrary.

**[AMOUNT OF COMPENSATION]**

Amount of the compensation shall be as follows:

**(1) Death:**

Where death result from the injury to a workman in receipt of monthly wages falling within limits shown in the first column of Schedule IV the amount shown against such limits in the second column thereof.

**(2) Permanent Total Disablement:**

Where permanent total disablement results from injury to a workman in receipt of monthly falling within the limits shown in the first column of Schedule IV the amount shown against such limits in the third column thereof.

**(3) Permanent Partial Disablement:**

Where permanent partial disablement results from injury:

- (i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
- (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

Where more injuries than one are caused by the same accident, the amount of exceed the amount which world have been payable if permanent total disablement had resulted from the injuries.

**(4) Temporary Disablement:**

Where temporary disablement whether total or partial, results from the injury, a half monthly payment payable on the sixteenth day after the expiry of waiting period of four days from the date of disablement, and thereafter half monthly payment during the disablement, or during a period of five years whichever period is shorter.

**QUESTION NO. 3**

## QUESTION NO. 4

Suit of damages is a remedy for breach of contract is available to an aggrieved person. When there is some breach in the performance of contract, damages can be claimed by the aggrieved party.

### KINDS OF DAMAGES

**(i) Ordinary or General Damages:**

These are damages, which are awarded to compensate for loss due to breach of contract. No indirect or remote loss can be recovered.

**Example 1:**

A contracts to deliver 100 bags of rice at Rs. 1000 each on a future date on the due date herefun to deliver. The price on that day is Rs. 1500 per bag. The measure of damage is the difference between market price on the date of breach and the contract price.

**Example 2:**

A contracts to buy B's ship for Rs. 50000 but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of contract price over the price, which B can obtain for the ship at the time of breach.

**Example 3:**

A railway passenger's wife caught cold and fell ill due to her being asked to get down at a place other than the railway station.

In a suit by plaintiff alone could be granted but not for the sickness of plaintiff wife because it was a very remote consequence.

**(ii) Special Damages:**

These are awarded under special circumstances. In other words, these are due to indirect losses. e.g., loss of good will, damage to reputation, loss of market prestige, defamation etc.

• Special damages cannot be claimed as a matter of right but under special circumstances:

- (i) Special circumstances must be known to parties.
- (ii) Subsequent knowledge of special circumstances does not allow such damages.
- (iii) Damages must be result of breach of contract.
- (iv) Parties to contract must have knowledge about the loss.

**Example:**

A, a builder, contracts to create and furnish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of contract between B and C. A builds the house so badly that before 1<sup>st</sup> January, it falls down and has to be rebuild by B, who in consequence, loses the rent, which he was to receive from C and is obliged to make compensation to C for the breach of contract. A must make compensation to B for the cost of rebuilding the house, for the rent loss and for compensation make to C.

**(iii) Exemplary Damages:**

These are damages, which are awarded to punish the guilty party for breach, and to compensate for the loss suffered.

Usually these are awarded in the following cases,

- (i) Breach of contract to marry.
- (ii) Dishonour of cheques when there are sufficient funds to the credit of customer.

**CASE LAW****Westersen Vs. Olathe State Bank:****Facts:**

Olathe state bank agreed to loan to western may for a trip to California by crediting in a court with such Sums as required at destination. Westerner reached destination but bank refused to credit the amount. The court allowed damages for the stall supporting.

**Held:**

C was entitled to normal damage.

**(iv) Nominal Damages:**

These damages are awarded when there is no loss or damage due to breach of contract. Nominal damages are meant neither to compensate the aggrieved party nor to punish guilty. However, court may also refuse to award these damages.

**CASE LAW****Charter Vs. Sullivan:****Facts:**

Contract to buy a car from C who was Car dealer. Later on S refused to buy the same Car. So sold the car to another person and there was no loss to dealer. C filed a suit for loss of profit

**(v) Liquidated Damages:**

When, at the formation of the contract, the contracting parties fix the amount of damages, it is called liquidated damages. A liquidated damage is determined before the breach of contract.

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**QUESTION NO. 5**

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See Paper 2017 Question No. 7

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**QUESTION NO. 6**

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Same Answer as in Question No. 4

**QUESTION NO. 7****INTRODUCTION:**

The law of contract is the most important and vital role-playing law in the business arena. Its rules and principles provide guidelines for business transactions. Every day, almost all of the persons are entering into various types of agreements and contracts. This study shall provide a legal aspect forming contracts etc.

**Dictionary Meaning of Word Contract:**

A contract means "the writing which contains the agreement of parties, with terms and conditions and which serves as a proof of the Obligations".

**According to Contract Act 1872 Section 2(h):**

According to section 2(h) of Contract Act 1872, "an agreement, enforceable by law" is called contract.

**ESSENTIALS OF VALID CONTRACT****(1) There must be an Agreement:**

First and foremost essential element for a valid contract is that there should be an agreement. For an agreement there must be offer and acceptance. It is also necessary that offer and acceptances is made with an intention to create legal relationship between parties. Moreover, offer must be clear and must be communicated Acceptance must be definite and must be unconditional.

**(2) Free Consent of Parties / Consensus-ad-Idem:**

Second essential element for a valid contract is that the parties must have free - consent to enter into an agreement.

- **Consent Means to Agree:**

- (i) In the same thing
- (ii) In the same sense

- **Consent is Free:**

When it is not affected by:

- (i) Coercion (use of force)
- (ii) Undue influence (use of relation)
- (iii) Fraud (Intentional mis-statement)
- (iv) Misrepresentation (unintentional mis-statement)
- (v) Mistake

Consensus-ad-idem also means identity of mind of parties. If the consent of the parties to a contract is not free, the contract is not valid but voidable one.

**(3) Parties must be Competent to Contract:**

An other essential element of a valid contract is that the parties to contract must be capable of entering into an agreement.

**Contract Act 1872 says that Every Person is Competent to Contract who is:**

- (i) Of the age of majority
- (ii) Of sound mind
- (iii) Not disqualified by law

In other words, minors, unsound mind and persons disqualified by law cannot enter into a contract. Contracts by such persons are void-ab-initio (from the beginning). Persons become incompetent to contract due to minority, lunacy, idiocy, drunkenness etc.

**(4) Lawful Consideration:**

There is a general rule "No Consideration, No contract" In other words, contracts without consideration are void. However there are also certain cases where consideration is not necessary.

Consideration means "something in return". It also means, "Price of Promise". However price need not be in terms of money. Consideration is at the desire of the promisor of the contract.

**Contract Act 1872, Defines Consideration as:**

- (i) An act or abstinence
- (ii) Desired by the promisor
- (iii) To be done by the promisee

**However Consideration must be Lawful:**

A consideration is unlawful if it is:

- (i) Forbidden by law
- (ii) Fraudulent
- (iii) Involves injury to person or property of any other person
- (iv) Immoral
- (v) Opposed to public policy

Consideration may be past, present or future.

**(5) Lawful Object:**

Object means purpose for which contract is intended to be made. For a valid contract, the object of an agreement has to be lawful. An object is unlawful if it is:

- (i) Forbidden by law
- (ii) Involves injury to person or property
- (iii) Immoral
- (iv) Fraudulent
- (v) Opposed to public policy

**A contract having unlawful object is void.**

**(6) Agreement must not be Expressly Declared Void by Law:**

As we know that for a valid contract, there must be an agreement. However, that agreement must not expressly declared void by law. Here are some agreements. Which have been declared void expressly by law.

- (i) Agreement in restraint of marriages.
- (ii) Agreement in restraint of trade.
- (iii) Agreement in restraint of legal proceedings.
- (iv) Agreement to do an impossible act.

**IMPLIED ESSENTIALS OF A VALID CONTRACT****(7) Intention to Create Legal Relationship:**

It is also essential that parties, while entering into an agreement must have an intention to create legal relationship between themselves. When there is such intention, the agreement becomes enforceable by law. But if there is no such intention, the agreement lacks enforceability and cannot be converted into a contract, it simply remains an agreement.

**(8) Writing and Registration:**

Agreement can be oral but it is difficult to prove an oral agreement. When agreements are in writing, having consideration of Rs. 100 or more, it is compulsory required to be registered under Registration Act 1925. For registration, witnesses, stamps, and registration fee is compulsory.

**(9) Possibility of Performance:**

"An agreement to do an impossible act is void" It is also an essential element for a valid contract that it is possible to perform. If the performance of a contract is impossible, then it is void contract. If the Performa of a contract seems to be uncertain, indefinite, or impossible, the contract is not valid.

**(10) Certainty:**

"An agreement, the meaning of which is not clear or capable of being certain, is void". A valid contract must contain certain terms and conditions In other words; the terms and conditions of the contract must be definite, clear, and comprehensive. However, if the meaning or sense of the terms and conditions of the contract are not clear but create ambiguity, it is not a valid contract.

**QUESTION NO. 8**

See Paper 2014 Question No. 5