

Question No. 1:**Define Contract of sale, Explain rights of an unpaid seller against the goods and buyer?****Contract of Sale**

According to Section 4 of the Sale of Goods Act a contract of the sale of goods is a contract whereby the seller transfers, or agrees to transfer, the property in (i.e., ownership of) goods to the buyer for a price.

A contract of sale may be (i) absolute or (ii) conditional, i.e., according to the wishes of the parties to the contract. The term “contract of sale” is a generic term. It includes an ‘actual sale’ as well as an ‘agreement to sell’.

Where under a contract of sale the property in the goods (i.e., the ownership has passed from the seller to the buyer, the contract is called a sale.

Where the transfer of ownership is to take place at a future date or subject to some condition to be fulfilled later, the contract is called an agreement to sell. An agreement to sell becomes a sale when the time elapses or the condition is fulfilled subject to which the ownership of the goods is to be transferred.

Who is an Unpaid Seller?

An unpaid seller is one to whom the whole of the price has not been paid or a bill of exchange or such other negotiable instrument given to him has been dishonoured.

Rights of an unpaid seller against the goods

These rights of the unpaid seller are known as ‘rights in rem’. If the property in the goods has already been passed on to the buyer, the unpaid seller has the following rights against the goods:

1. Right of Lien

The right of lien is the right to retain possession of the goods until payment for the same is made. Such a right is available to the unpaid seller having possession of the goods if the goods have been sold without any stipulation as to credit or they have been sold on credit, but the term of credit has expired. Such a right is also available in case the buyer has become insolvent.

Rules regarding lien

1. Possession of goods is important to exercise the right of lien.
2. The right of lien is not affected even if the seller has parted with the document of title to the goods.
3. The possession of the goods by the seller must not expressly exclude the right of lien.
4. The lien can be exercised by the unpaid seller only for the price due and not for any other charges like warehouse rent or carriage expenses.

5. If the unpaid seller has already made part delivery of the goods to the buyer, he may exercise lien on the remainder.

Termination of Lien

The unpaid seller loses his right of lien on the goods in the following circumstances:

1. If he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
2. If the buyer or his agent lawfully obtains possession of the goods.
3. If he waives his right of lien on the goods. The seller may waive his rights either expressly or impliedly. If the contract of sale itself provides in express terms that the seller shall not retain possession of the goods even if the price has not been paid, it is said to be an express waiver of lien. Implied waiver of lien takes place when the seller sells the goods on credit, or grants a fresh term of credit on the expiry of the original term of credit.

2. Right of stoppage in transit

It is a right of stopping the goods while in transit after the unpaid seller has lost possession of the goods. This right enables the seller to regain possession. Such a right is available to the unpaid seller when the buyer becomes insolvent and when the goods are in transit. Goods are deemed to be in course of transit if they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent takes delivery of them.

Differences between right of lien and right of stoppage in transit

Right of Lien	Right of Stoppage in Transit
1. The unpaid seller can exercise this right only if he keeps possession of the goods.	1. The unpaid seller can exercise this right if he has lost possession of the goods.
2. This right can be exercised when the buyer is able to pay but does not pay.	2. This right is exercised only when the buyer is insolvent.
3. This right comes to an end the moment possession of the goods is lost by the unpaid seller.	3. This right commences only when the seller has lost possession of the goods.
4. It is a right to retain possession.	4. It is a right to regain possession.

3. Right of Re-Sale

Rights of an unpaid seller against the goods

The unpaid seller can re-sell the goods if the goods are of a perishable nature. He can also make a resale of the goods if he has given notice to the buyer of his intention to re-sell and the buyer has not within a reasonable time paid the price. If on resale, the seller incurs loss, he can claim the same from the buyer as damages for breach of contract. If there is a profit on resale, he is not bound to hand it over to the buyer.

If the property in the goods has not passed to the buyer, the unpaid seller has, in addition to all other remedies, the right to withhold delivery.

Rights of an unpaid seller against the buyer personally

These rights of the unpaid seller against the buyer are called 'rights in personam'. These are as follows:

1. If the property in the goods has passed to the buyer and the buyer wrongfully refuses to pay for the goods, the seller may sue him for the price.
2. Even if the property in the goods has not passed to the buyer, the unpaid seller may sue the buyer for the price if he wrongfully refuses to pay.
3. If the buyer wrongfully refuses to accept and pay for the goods, the seller may sue him for non-acceptance.
4. If the buyer abandons the contract before the date of delivery, the seller may treat the contract as existing and wait till the date of delivery or he may treat the contract as cancelled and sue the buyer for damages for the breach.
5. If there is a specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If there is no such agreement, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

Question 2 .

Differentiate between common carrier and private carrier, Discuss the Characteristics, Duties, Rights and liabilities of a common carrier? Also define private Carrier.

Common Carrier Vs. Private Carrier

- (1) A common carrier renders regular services, while private carrier renders casual and non-regular services.
- (2) A common carrier generally cannot refuse to carry goods offered to him, while a private carrier keeps this right reserved.
- (3) A Common carrier, the terms of carriage are fixed, while private carriers special terms are negotiated.
- (4) The liabilities of a common carrier are governed by the Common Carrier Act 1865 while the liabilities of a private carrier are those of a bailee.

1. Common or Public Carriers

A common carrier is one who undertakes for hire to transport from one place to another the goods of anyone willing to employ him either by land, sea or air. The Common Carriers Act 1865 defines a common carrier, as "any individual, firm or company (other than the Government) who transports goods, as a business for money, over land or inland waterways, without discrimination between different consignors."

Characteristics of Common Carrier

According to the definition given above, the characteristics of a common carrier in India are as follows :

- (1) The common carrier may be an individual, a firm or company. But the Government is not included in the category. Thus, the post office is not a common carrier, though it may carry goods.
- (2) Only the carriers of goods are common carriers, So, carriers of passengers are not included therein.
- (3) One who carries goods as his regular business is a common carrier. A person carrying goods occasionally is not a common carrier.
- (4) A common carrier is one who is ready to carry the goods of any person without any discrimination. If a carrier reserves to himself the right to reject an offer, he is not a common carrier.
- (5) If a carrier offers to carry goods only from one specified place to another or to carry only a particular kind of goods, he is a common carrier.
- (6) The term common carrier is restricted to carriage by land and inland waterways only.
- (7) Charges for carrying goods are necessarily to be charged. One who carries goods free is not a common carrier.

Duties of a Common Carrier

The Common Carriers Act 1865 lays down the following duties. The English Common Law also apply to matters, not covered by this Act.

- (a) *Carry for all* : He is bound to receive and carry all goods which he professes to carry for all persons, who agree to pay him proper charges and who choose to employ him for the carriage of their goods.
- (b) *Carry goods safely* : He is the insurer of goods so takes all reasonable precautions for the safe carriage of the goods and deliver the goods safely.
- (c) *Delivery within reasonable time* : Upon the completion of the transit, he must deliver the goods as instructed by the consignor at the agreed time or within reasonable time. He should not deviate from customary route and not cause unwanted delay.
- (d) *Delivery the goods at the place* : He must deliver the goods at the place fixed by the consignor.
- (e) *Keep the goods in his custody* : Where it is a practice to take delivery of goods at Wharf, the goods must be kept by the Carrier at his own risk in his custody for a reasonable time.

Rights of Common Carrier

- (1) A common carrier is entitled to the agreed remuneration or to a reasonable remuneration for his services. He can demand payment in advance.
- (2) He has a right to retain the goods and refuse delivery thereof until his charges for the carriage are paid. He can exercise particular lien over the goods.
- (3) A common carrier is not bound to carry goods under certain circumstances (exceptions stated above).
- (4) If the consignee refuses to accept delivery of the goods, the carrier is at liberty to take such steps as are reasonable and prudent under the circumstances. He can recover all reasonable expenses incurred by him in this connection.
- (5) By entering into a special contract with the consignor, he can limit his liability.
- (6) If perishable goods get spoiled on the way, he can sell them, in the absence of any special instructions by the consignor.
- (7) He can recover damages from the consignor for loss suffered by him because of dangerous nature of goods not being explained to him by the consignor.

Liability of Common Carrier

According to the English Common Law, a common carrier of goods is an insurer of goods carried. He is bound to indemnify the owner in full for any loss or damage to the goods, whether caused by his negligence or not, in course of carriage. However, the following are the exceptions to this rule :

- (1) *An Act of God* : When damage to the goods is caused by the Act of God, the carrier will not be liable. For example, storm, earthquake, flood, lightening etc. The happening of these things cannot be predicted.
- (2) *Enemies of the State* : When damage or loss caused to the goods by the enemies of the state, the carrier will not be liable. This type of loss happens during war with alien enemies with India.
- (3) *Inherent Vice in the goods Carried* : A carrier is not liable for any loss arising from inherent vice in the goods carried over. For example, evaporation of liquids, perishing of fruits, disease in animals, etc., which he can not control and against which he cannot guard.
- (4) *Defective packing* : The carrier is not responsible, if the loss is caused due to defective packing of the goods consigned. Glassware, chinaware needs special care, and if the consignor fails to disclose the fact, the carrier is not liable.
- (5) *Fault or fraud of the consignor* : If the consignor is guilty of any fraud, the carrier is not liable for any damage or loss.

Private Carrier

Private carrier is one who casually or occasionally carries goods for others on special terms mutually agreed upon. He enjoys the discretion of accepting or rejecting any proposal for carriage of goods. He occasionally carries goods for others and that too under special agreement. Thus, he may or may not carry goods for others. He does not make a general offer. The

contractor is a private carrier. He negotiates special terms for each service.

A private carrier is not governed by the Carriers Act 1865. His position is that of a bailee. Hence, he is governed by the Indian Contract Act.

Question No.3

what are the powers and functions of National Industrial Relation Commission?

Discuss in detail.

Introduction:

Commission is a body of persons to run and implement the procedures of industrial relations ordinance 2002. The Federal Government shall constitute a National Industrial Relations Commission consisting of eight members including its chairman. The Federal Government shall appoint the chairman and its members. The Federal Government shall determine the qualification and terms and conditions of service for appointment as chairman and member of the commission. (sec.49)

Powers and Functions of the Commission.

Following are the functions and powers of the Commission:

1. **Adjudication of disputes**

To adjudicate and determine an industrial dispute that is of national importance referred by the federal government.

2. **Registration of trade unions.**

To register industry wise trade union, federation of trade unions and federations at the national level.

3. **Ratings of trade unions.**

To carry out ratings of the trade unions and federations registered by it in terms of their standing and character.

4. **Determination of CBA.**

To determine the collective bargaining agents amongst industry wise Trade unions and federations at the national level.

5. **Advisory services.**

To advise Government, Trade unions and federations in respect to the education of workers in essentials of the Trade unionism.

6. **Worker education.**

To educate the workers in respect of their rights and obligations and to secure the provision of facilities.

7. **Promotion of unionism.**

To promote healthy Trade unionism in establishments within a province and federations of Trade unions.

8. **Facility centre.**

To facilitate the formation of federations at national level.

9. **Unfair labour practices.**

To deal with cases of unfair practices on the part of the employer, workmen.

10. **Check on CBA.**

To deal with cases of unfair practices on the part of collective bargaining agent and Trade unions or their agents.

11. **Prevention of unfair labour practices.**

To take measures to prevent an employer or workmen from committing an unfair labour practice.

12. **Offences.**

To try offences in respect of matters to any of its functions.

13. **Punishment.**

The commission shall have power to punish any person who obstructs its processes or disobeys its orders and directions.

14. **Prosecution.**

The commission may initiate prosecution, trial, action or proceedings with regard to any matter relating to its functions.

15. **Authority delegation.**

The commission for the purpose of an investigation or inquiry may authorize its chairman or any member to enter any building, factory etc. and inspect, interrogate and report.

16. **Withdrawal of cases.**

The commission may on the application of the party or on its own motion, withdraw any case of unfair labour practice from the labour courts.

17. **Seizure of cases.**

To deal the unfair labour practice of which the commission is seized, the commission may,

1. proceed directly with the case,
2. ask the registrar to enquire into it and report.
3. refer the case to labour court for report or for disposal.

18. **Assigned powers.**

To exercise other powers and functions, assigned by the federal government from time to time.

19. Power to make regulations.

The Commission may, with the prior approval of the Federal Government, make such regulations relating to its procedure and the performance of its functions as it may deem fit.

20. Power to demand reports.

Commission may order to labour court to enquire into any case and submit a report about the matters.

21. Formation of benches.

For the efficient performance of the functions of the commission, the chairman of the commission shall form various benches of the commission on the behalf of the commission.

22. General powers and functions.

The commission has general powers and functions to regulate, maintain and run the procedures of industrial commission ordinance.

Finality of Order:

The order passed by the commission or any of its Benches shall not be called in question in any court, and such order, decision, judgment or sentence passed by the Commission shall be final.(53)

Question No. 4.

Explain Capacity to contract , what is the nature of agreement made by persons incompetent to contract (including contract by minors)

1.1 Who are competent to contract?

According to Section 11 of the Contract Act every person is competent to contract:

- who is of the age of majority according to the law to which he is subject, and
- who is of sound mind, and
- is not disqualified from contracting by any law to which he is subject.

The below chart shows the persons who are incompetent to contract:

Incompetent to contract		
Minor	Unsound mind	Disqualified by law <ul style="list-style-type: none"> • Alien enemies • Foreign sovereigns and ambassadors • Convicts • Insolvent

1.2 Agreements with a minor

In Pakistan a minor is a person who has not attained majority which is:

- 21 years where a guardian of a minor's person or property is appointed by the court of law under the Guardians and Wards Act, 1890; or
- 18 years in other cases.

Position of agreements by a minor

The law pertaining to agreements with a minor is given below:

- An agreement with a minor is void.
- Where an infant / minor represents fraudulently or otherwise that he is of the age of majority and induces another to enter into a contract with him, he will not be liable
- Since ratification has a retrospective application it is necessary that the minor must be competent to contract at the time when the contract is entered into. Therefore, an agreement with a minor cannot be ratified subsequently after he attains majority.

- If a minor enters into an agreement jointly with a major person then such agreement can be enforced against the major person who has jointly promised to perform.
- A minor can be admitted for the benefits of partnership with the consent of all the partners. He cannot be a partner until he attains majority. [Section 30 of the Partnership Act]
- A minor can be agent but cannot be a principal but if anyone acts on behalf of minor principal, he will be personally liable. [Section 184]
- A minor cannot be declared insolvent because he is incompetent to contract.
- A minor can file a suit but cannot be sued.
- If the parent of a minor entered into on behalf of a minor being within the scope of the authority and for the benefit of the minor then such agreements can be enforced by or against the minor.
- A person who supplied necessaries to a minor is entitled to be reimbursed from the property of such minor. Such claim is against the property of the minor and not against the minor personally. [Section 68]

1.3 Agreements by persons of unsound mind

Meaning of sound mind

According to Section 12 of the Contract Act, a person is said to be of sound mind for the purpose of making a contract

- if at the time when he makes it,
- he is capable to understand the terms of the contract,
- to form a rational judgment as to its effect upon his interests.

Thus, if a person is not capable of both, he is said to have suffered from unsoundness of mind.



Example: Meaning of sound mind

The examples of persons having an unsound mind include:

- specific persons/idiots
- lunatics and
- drunken persons.

Specific persons/Idiots

A person who is so mentally deficient by birth as to be incapable of ordinary reasoning or rational conduct is said to be a specific person.

Lunatic

A person affected by lunacy is said to be 'lunatic'. A person can become lunatic at any stage of his life.

Position of agreements with a person of unsound mind

The positions of such agreements are given below:

- If a lunatic enters into a contract while he is of unsound mind, an agreement during this period is void.
- If a lunatic enters into a contract while he is of sound mind, an agreement during this period is valid.
- An agreement with a specific person is void.
- A person delirious from fever or drunken person cannot enter into a contract while such delirium or drunkenness lasts and he is not able to understand the terms of the contract or form a rational judgment.

- A person of unsound mind can enforce a contract for his benefits
- A person who supplied necessaries to a person of unsound mind or his defendant entitled to be reimbursed from the property of such person of unsound mind. Such claim is against the property of the person of unsound mind not against the person personally.

Position of a person who is usually of unsound mind but occasionally of sound mind

A person who is

- usually of unsound mind but
- occasionally of sound mind

may make a contract when he is of sound mind



Example: Position of a person who is usually of unsound mind but occasionally of sound mind

A patient in a lunatic asylum who is at intervals of sound mind may contract during those intervals.

Position of a person who is usually of sound mind but occasionally of unsound mind

A person who is

- usually of sound mind but
- occasionally of unsound mind

may not make a contract when he is of unsound mind



Example: Position of a person who is usually of sound mind but occasionally of unsound mind

A sane man who is so delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interest cannot enter into contract while such delirium or drunkenness lasts.

Burden of proof

The rules regarding the burden of proof are following:

- If a person is usually of sound mind or in drunkenness or in delirium from fever then the burden of proof that he was of unsound mind lies on the person who questions the validity of contract.
- If a person is usually of unsound mind then the burden of proof that he was of sound mind lies on the person who confirms it.

1.4 Agreements with persons disqualified by law

There are some disqualifications imposed on certain persons in respect of their capacity to contract which are discussed below:

Alien enemies	An alien is a person who is the citizen of a foreign country. He can enter into a contract and be sued during peace time but if a war is declared than an alien enemy can neither enter into a contract or be sued during the period of war. Contracts entered before the declaration of war are either suspended or terminated during the period of war.
Foreign sovereigns and ambassadors	Such persons have immunity unless they choose to submit themselves to the jurisdictions of our courts. They have a right to enter into a contract but can claim the privilege of not being sued.
Convicts	A convict while under imprisonment is incapable of contracting but this disability comes to an end after the expiry of the sentence or when he is on parole.

Insolvent	A person declared as insolvent cannot enter into a contract as his property is dealt with by official assignee or official receiver.
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Note

Companies	A company is an artificial person and a contract entered into by a company will be valid only if it is within the powers granted by the Memorandum of Association.
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Question 5.

What are the the various ways in which a contract may be discharged ?

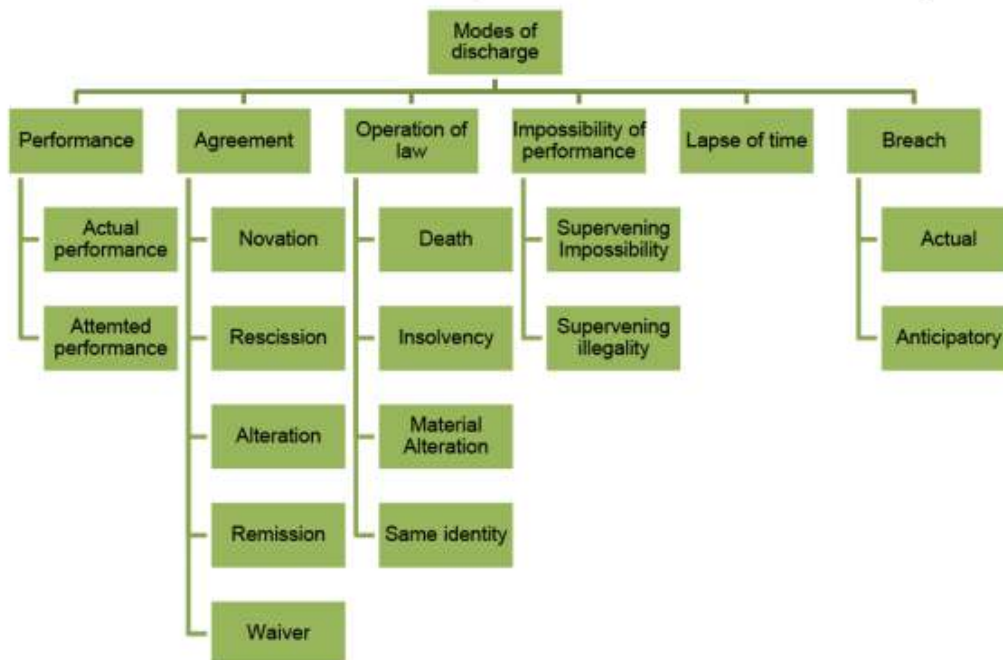
1 DISCHARGE OF A CONTRACT

1.1 Meaning of discharge

- A contract is said to be discharged when contractual relations between the parties to a contract are terminated or comes to an end.
- In other words, when the parties to a contract have either performed or are freed from the task of performing their respective obligations as arising from the contract.

1.2 Modes of discharge of a contract

The chart below shows the various ways in which a contract is said to be discharged:



A Contract is said to be discharged when the rights and obligations created by it come to an end. A contract may be discharged in the following modes:-

1. **Discharge by performance** – Discharge by performance takes place when the parties to a contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Performance may be actual performance or attempted performance.
2. **Discharge by Agreement or Consent** – A Contract comes into existence by an agreement and it may be discharged also by an agreement. The following are modes of discharge of a contract by an agreement –

a) **By Waiver** – Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. For eg. A an actor promised to make a guest performance in the film made by B. Later B forbids A from making the guest appearance. B is discharged of his obligation.

b) **By Novation** – Novation means the substitution of a new contract for an old one. The new agreement extinguishes the rights and obligations that were in effect under the old agreement.

A owes B Rs.10,000. A enters into an agreement with B, and gives B a mortgage of his (A's) estate for Rs.5,000 in place of the debt of Rs.10,000. This is a new contract and extinguishes the old.

c) **By Rescission** – Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur by mutual consent or where one party fails in the performance of his obligations, the other party may rescind the contract.

d) **By alteration** – Alteration of a contract may take place when one or more of the terms of the contract is/are altered by mutual consent of the parties to the contract.

e) **By Remission** – Remission means acceptance of a lesser fulfilment of the promise made, Eg.

Acceptance of a lesser sum than what was contracted for, in discharge of the whole of the debt.

f) **By Merger** – Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract. For eg. P holds a property under a lease. He later buys the property. His rights as a lessee merge into his rights as an owner.

3. **Discharge by impossibility of performance** – If a contract contains an undertaking to perform an impossibility, it is *void ab initio*. As per Section 56, impossibility of performance may fall into either of the following categories –

(i) **Impossibility existing at the time formation of the contract** – This is know as pre-contractual impossibility. The fact of impossibility may be –

a) **known to the parties** – Both the parties are aware or know that the contract is to perform an impossible act. For eg. A agrees with B to put life into dead wife of B, the agreement is void.

b) **unknown to the parties** – Both the parties are unaware of the impossibility. The contract could be on the ground of mutual mistake of fact. For eg. A contract to sell his house at Andaman to B. Both the parties are in Mumbai and are unknown to the fact that the house is actually washed away due to Tsunami.

(ii) **Impossibility arising subsequent to the formation of the contract** – Where impossibility of performance of the contract is caused by circumstances beyond the control of the parties, the parties are discharged from further performance of the obligation arising under the contract.

4. **Discharge by lapse of time** – The Limitation Act, 1963 lays down certain specified periods within which different contracts are to be performed and be enforceable. If a party to

a contract does not perform, action can be taken only within the time specified by the Act. Failing which the contract is terminated by lapse of time.

For eg. A sold a gold chain to B on credit without any period of credit, the payment must be made or the suit to recover it, must be instituted within three years from the date of delivery of the instrument.

5. Discharge by Operation of Law – A contract may be discharged independently of the wished of the parties i.e. by operation of law. This includes discharge –

a) **By death** – In contract involving personal skill or ability, the contract is terminated on the death of the promisor. In other contracts the rights and liabilities of a deceased person pass on to the legal representatives of the deceased person.

b) **By insolvency** – When a person is declared insolvent, he is discharged from all liabilities incurred prior to such declaration.

c) **By unauthorized material alteration of the terms of a written agreement** – Any material alteration made by a party to the contract, without the prior permission of the other party, the innocent party is discharged.

d) **By rights and liabilities becoming vested in the same person** – When the rights and liabilities under a contract vests in the same person.

6. Discharge by Breach of Contract – A breach of contract occurs when a party thereto without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. A breach to a contract occurs in two ways :-

a) **Actual Breach** – When a party fails, or neglects or refuses or does not attempt to perform his obligation at the time fixed for performance, it results in actual breach of contract. For eg. A promises to deliver 100 packs of ice-cream to B on his wedding day. A does not deliver the packs on that day. A has committed actual breach of the contract.

b) **Anticipatory Breach** – Anticipatory Breach is a breach before the time of the performance of the contract has arrived. This may take place either by the promisor doing an act which makes the performance of his promise impossible or by the promisor, in way showing his intention not to perform it.

Question 6 .

Differentiate between promissory note and bills of exchange?

We can distinguish or difference between bill of exchange and promissory note by the points

1. Number Of Parties :-

Bill of exchange : There are three parties in the bill of exchange.

Promissory note : There are two parties in the promissory note.

2. Number Written By :-

Bill of exchange : It is written by the creditor.

Promissory note : It is written by the debtor.

3. Order And Promise :-

Bill of exchange : In a bill of exchange it is an order.

Promissory note : In a pro-note it is a promise to make the payment.

4. Acceptance :-

Bill of exchange : It must be accepted by the drawee before.

Promissory note : It requires no acceptance.

5. Dishonour Notice :-

Bill of exchange : In this case notice of dishonour must be given by the holder to the concerned parties.

Promissory note : In case of promissory note there is no need to serve the notice to the maker.

6. Protest :-

Bill of exchange : A foreign bill must be protested in case of dishonour.

Promissory note : Protest is not needed in case of pro-note.

7. In Sets :-

Bill of exchange : A foreign bill can be drawn in sets.

Promissory note : A pro-note cannot be drawn in sets.

8. Liability :-

Bill of exchange : The drawer is liable only when the acceptor does not honour the bill.

Promissory note : The liability of pro-note maker is primary.

9. Payable To Bearer :-

Bill of exchange : A bill can be drawn if it is not drawn payable to bearer on demand.

Promissory note : A pro-note can not be drawn payable to the bearer.

10. Drawer and Payee :-

Bill of exchange : In this case drawer or payee may be the same person.

Promissory note : In case of pro-note the drawer can not become the payee.

11. Drawer's Position :-

Bill of exchange : In this case the drawer of accepted bill stands in an immediate relation with the acceptor and not the payee.

Promissory note : The drawer of the pro-note stands in immediate relations with the payee.

12. Conditional :-

Bill of exchange : The acceptance of the bill may be conditional with the holder's consent.

Promissory note : A pro-note cannot be made conditional.

13. Presentment :-

Bill of exchange : In this case provision relating to presentment for acceptance is applicable.

Promissory note : Such provision is not applicable in case of promissory note.

Question 7 .

Define contract, what are the legal essentials of a valid contract?

A valid contract is an agreement, which is binding and enforceable. In valid contract all the parties are legally bound to perform the contract.

According to Section 2 (h) of the Contract Act, “an agreement enforceable by law is a contract.”

It means an agreement is regarded as a contract when it is enforceable by law. It is a contract, which can be enforced by either of the parties to the contract. If one of the parties refuses to perform the contract, the other party can take an action in a court of law against such party. To be enforceable by law, an agreement must possess some essentials of a valid contract, which are stated in section 10.

According to Section 10, “all agreements are contracts if they are made by the free consent of parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.”

When necessary the agreement must satisfy the requirements of law regarding writing attestation or registration.

Essentials of Valid Contract:

1. Offers and Acceptance
2. Legal Relationship
3. Lawful Consideration
4. Capacity of Parties
5. Free Consent
6. Lawful Objects
7. Writing and Registration

8. Certainty
9. Possibility of Performance
10. Not Expressly Declared Void

An agreement becomes enforceable by law when it fulfils essential conditions. These conditions may be called the essentials of a valid contract, which are as follows:

1. Offers and Acceptance

For an agreement there must be a lawful offer by one and lawful acceptance of that offer from the other party. The term lawful means that the offer and acceptance must satisfy the requirements of Contract Act. The offer must be made with the intention of creating legal relations otherwise, there will be no agreement.

Example:

A says to B that he will sell his cycle to him for Rs.2000. This is an offer. If B accepts this offer, there is an acceptance.

2. Legal Relationship

The parties to an agreement must create legal relationship. It arises when parties know that if one fails for the failure of a contract. Agreements of a social or domestic nature do not create legal relations and as such cannot give rise to a contract. It is presumed in commercial agreements that parties intend to create legal relations.

Example:

1. A father promises to pay his son Rs.500 every month as pocket money. Later, he refuses to pay. The son cannot recover as it is a social agreement and does not create legal relations.

2. A offers to sell his watch to B for Rs.200 and B agrees to buy it at the same price, there is a contract as it creates legal-relationship between them.

3. A husband promised to pay his wife a household allowance of 30 pounds every month. Later, the parties separated and the husband failed to pay. The wife used for allowance. Held that the wife was not entitled for the allowance as the agreement was social and did not create any legal obligations.

3. Lawful Consideration

The third essential of a valid contract is the presence of consideration. Consideration is "something in return." It may be some benefit to the party. Consideration has been defined as the price paid by one party for the promise of the other. An agreement is enforceable only when both the parties get something and give something. The something given or obtained is the price of the promise and is called consideration.

Example:

1. A agrees to sell his house to B for Rs.10 Lac is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay Rs.10 Lac. These are lawful considerations.

2. A promise to obtain for B employment in the public service, and B promise to pay 10,000 rupees to A. the agreement is void, as the consideration for it is unlawful.

4. Capacity of Parties:

An agreement is enforceable only if it is entered into by parties who possess contractual capacity. It means that the parties to an agreement must be competent to contract. According to Section 11, in order to be competent to contract the parties must be of the age of majority and of sound mind and must not be disqualified from contracting by any law to which they are subject. A contract by a person of unsound mind is void ab-initio (from the beginning).

If one of the parties to the agreement suffers from minority, madness, drunkenness etc., the agreement is not enforceable at law, except in some cases.

Example:

1. M, a person of unsound mind, enters into an agreement with S to sell his house for Rs.2 lac. It is not a valid contract because M is not competent to contract.

2. A, aged 20 promises to sell his car to B for Rs.3 Lac. It is a valid contract because A is competent to contract.

5. Free Consent:

It is another essential of a valid contract. Consent means that the parties must have agreed upon the same thing in the same sense. For a valid contract it is necessary that the consent of parties to the contract must be free.

Example:

1. A compels B to enter into a contract on the point of pistol. It is not a valid contract as the consent of B is not free.

6. Lawful Objects:

It is also necessary that agreement should be made for a lawful object. The object for which the agreement has been entered into must not be fraudulent, illegal, immoral, or opposed to public policy or must not imply injury to the person or property of another. Every agreement of which the object or consideration is unlawful is illegal and therefore void.

Example:

A promise to pay B Rs.5 thousand if B beats C. The agreement is illegal as its object is unlawful.

7. Writing and Registration:

According to Contract Act, a contract may be oral or in writing. Although in practice, it is always in the interest of the parties that the contract should be made in writing so that it may be convenient to prove in the court. However, a verbal contract if proved in the court will not be considered invalid merely on the ground that it not in writing. It is essential for the validity of a contact that it must be in writing signed and attested by witness and registered if so required by the law.

Example:

1. A Verbally promises to sell his book to y for Rs.200 it is a valid contract because the law does not require it to be in writing.

2. A verbally promises to sell his house to B it is not a valid contract because the law requires that the contract of immovable property must be in writing.

8. Certainty:

According to Section 29 of the Contract Act, “Agreements the meaning of which are not certain or capable of being made certain are void.” In order to give rise to a valid contract the terms of the agreement, must not be vague or uncertain. For a valid contract, the terms and conditions of an agreement must be clear and certain.

Example:

1. A promised to sell 20 books to B. It is not clear which books A has promised to sell. The agreement is void because the terms are not clear.

2. A agrees to sell B a hundred tons of oil. It is not clear what is the kind of oil. The agreement is void because of it uncertainty.

3. O agreed to purchase a van from S on hire-purchase terms. The price was to be paid over two years. Held there was no contract as the terms were not certain about rate of interest and mode of payment.

9. Possibility of Performance:

The valid contract must be capable of performance section 56 lays down that. “An agreement to do an act impossible in itself is void.” If the act is legally or physically impossible to perform, the agreement cannot be enforced at law.

Example:

1. A agrees with B to discover treasure by magic, the agreement is not enforceable.
2. A agrees with B to put life into B's dead brother. The agreement is void as it is impossible of performance.

10. Not Expressly Declared Void:

An agreement must not be one of those, which have been expressly declared to be void by the Act. Section 24-30 explains certain types of agreement, which have been expressly declared to be void. An agreement in restraint of trade and an agreement by way of wager have been expressly declared void.

Example:

A promise to close his business against the promise of B to pay him Rs.2 lac is a void agreement because it is restraint of trade.

Question 8.

What is contract of agency, explain the various modes by which agency may be created?

Who is an agent and a principle (Sec. 182)

An "agent" is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

The relationship between an agent and a principal is called an "Agency." An agent therefore brings together his principal and a third person. Ex- A appoints B to Purchase a house for him. A is the principal, B is an agent and the relationship between them is that of Agency.

GENERAL RULES OF AGENCY

1. Whatever a person competent to contract may do by himself, he may do through an agent, except for acts involving personal skill and qualifications. Like, a person cannot marry through an agent, a person cannot paint a picture through agent.
2. The acts of an agent are acts of a principal for all legal purposes.

WHO MAY EMPLOY AN AGENT (Sec 183)- According to law, any person who is of the age of majority and who is sound mind, may employ an agent. Any person competent to contract may employ an agent, and a minor, a lunatic or a drunken person cannot employ an agent.

Who can be an agent (Sec 184)- "as between principle and third person any person may become agent" . thus even a minor, a lunatic or a drunken person can be employed as an

agent. However, in such case because runs a great risk as he cannot hold such an agent liable for misconduct or negligence.

Creation of Agency The following are different modes of creation of agency.

1. Agency by Express agreement.
2. Agency by Operation of law.
3. Agency by Ratification.
4. Agency by Implied authority.

1. Agency by Express agreement: Number of agency contract come into force under this method. It may be Oral or documentary or through power of attorney.

2. Agency by operation of law: At times contract of agency comes into operation by virtue of law.

For example: According to partnership act, every partner is agent of the firm as well as other parties. It is implied agency. On account of such implied agency only a partner can bind over firm as well as other partners, to his activities. In the same way according to companies act promoters are regarded as agents to the company

3. Agency by Ratification: Ratification means subsequent adoption of an activity. Soon after ratification principal – agent relations will come into operation. The person who has done the activity will become agent and the person who has given ratification will become principal.

- Ratification can be express or implied. In case where adoption of activity is made by means of expression, it is called express ratification. For example: Without A's direction, B has purchased goods for the sake of A. There after A has given his support (adoption) to B's activity, it is called Ratification. Now A is Principal and B is agent.
- The ratification where there is no expression is called implied ratification. For example: Mr. Q has P's money with him. Without P's direction Q has lent that money to R. There after R has paid interest directly to P. Without any debate P has taken that amount from R. It implies that P has given his support to Q's activity. It is implied ratification.

4. Agency by implied authority: This type of agency comes into force by virtue of relationship between parties or by conduct of parties.

For example: A and B are brothers, A has got settled in foreign country without any request from A, B has handed over A's agricultural land on these basis to a farmer and B is collecting and remitting the amount of rent to A. Here automatically A becomes principal and B becomes his agent. Agency by implied authority is of three types as shown below;

- Agency by Necessity
- Agency by Estoppel
- Agency by Holding out.

(i)By Necessity: At times it may become necessary to a person to act as agent to the other in emergency situation where the property or interest of another is in danger . the conditions which enables a person to act as an agent of another in necessity are as follows:

1. There should be a real necessity for acting on behalf of the principal.
2. It should be impossible to communicate with the principle within the time available.
3. The alleged agent should act bonafide in the interest of the principal.

For example: A has handed over 100 bags of butter for transportation, to a road transport company. Actually it is bailment contract assume that in the transit all vehicles has got stopped where it takes one week for further movement. So the transport company authorities have sold away the butter in those nearby villages. Here agency by necessity can be seen.

(ii)By Estoppel: Where a person, by his conduct or words spoken or written, willfully leads another to believe that a certain person is acting as his agent, he is estopped later on from denying the truth of the fact that such a person is dealing as his agent.

Example: In presence of A , B says to C that he (B) is A`s agent though it is not so actually. A has not restricted B from making such statement. It is agency by estoppel.

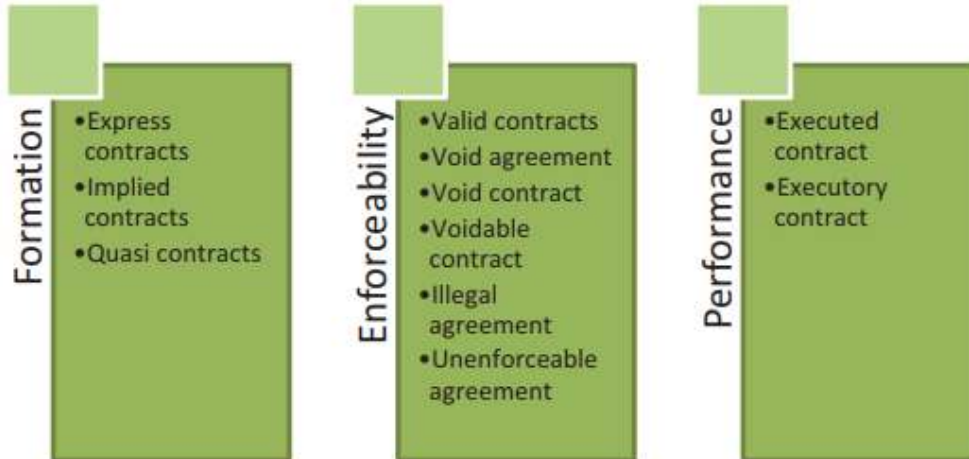
(iii)By Holding out: the principal is bound by the act of agent if on an earlier occasion he has made others believe that other person doing some act on his behalf is doing with his authority.

Example: Y is X`s servant and X has made Y accustomed to bring goods on credit from Z. On one occasion X has given amount to Y to bring goods from Z on cash. B bought goods on credit as usually and runs away with the money. This is agency by holding out and therefore X is liable to pay amount to Z.

Question No. 9
Explain Various Kinds of Contracts

1.3 Classifications of contract

The different classifications of contract are shown below:



The above classifications of contract are briefly discussed below:

Express contracts	A contract created by words i.e. verbally or in writing
Implied contracts	A contract created by conduct of a person or the circumstances of a particular case.
Quasi contracts	An obligation imposed by law.
Valid contract	An agreement which is enforceable by law.
Void agreement Section 2(g)	An agreement which is not enforceable by law.
Void contract Section 2(j)	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
Voidable contract Section 2(i)	An agreement which is enforceable by law at the option of the aggrieved party.
Illegal agreements	An agreement the object of which is illegal.
Unenforceable agreement	An agreement which is otherwise valid but due to some technical lacking, such as writing etc. remains unenforceable.
Executed contract	A contract where both the parties have performed their respective promises.
Executory contract	A contract in which something remains to be done.
Unilateral contract	A contract is which a promise on one side is exchanged for an act on the other side. In such contract one party to a contract has performed his part and performance is outstanding against the other party.
Bilateral contract	A contract in which a promise on one side is exchanged for a promise on the other.

Question No. 10**Describe the unfair labour practices on the part of employers and workmen?****Unfair labour Practice :-**

These practices may be committed by both the parties employer and employees. The act also prescribes penalties on the party which commits the unfair practice.

UNFAIR PRACTICE ON THE PART OF EMPLOYER :-

Following practices considered unfair labour practices :

1. Imposing Any Condition :-

If in the contract of employment this condition is imposed that worker will not join the trade union or he will leave the membership of a trade union. It is an unfair labour practice.

2. Persuasion For Trade Union :-

If any employer discharges or threatens any worker that he was persuading other worker for the membership or office ship of the trade union, is a unfair labour practice.

3. Participation In Union Activities :-

If any employer discharges, injuries or transfers the worker on this ground that he was participating in the promotion or other activities of trade union. It is also an unfair labour practice.

4. To Prevent By Offer :-

If an employer induces to prevent any worker becoming member or officer of the trade union by offering any advantage or providing any advantage is also an unfair practice.

5. Compelling For Settlement :-

If employer compels or attempts to compel any representative of the trade union for the settlement is also unfair practice.

6. Interference In Election :-

In the election of trade unions if employer interferes or in any way influences the vote for particular candidate is also unfair practice.

7. Discrimination :-

In case of promotion or employment if employer discriminates between the trade union officer and worker is also unfair practice.

8. Close Down Of Work :-

If the employer closes down the whole establishment against the standing orders of industrial and commercial employment ordinance 1968, it is also unfair labour practice on the part of the employer.

UNFAIR LABOUR PRACTICES ON THE PART OF THE WORKERS :-

Following are the important unfair labour practices on the part of workers or their representatives :

1. Persuasion During Working Hours :-

If any worker or member of trade union persuades during the working hours, a workman joins or not to join the trade union is an unfair labour practice.

2. Intimation :-

If any worker intimates other person to join or not to join, the trade union, or not to continue or to cease the membership of the trade union is also unfair labour practice.

3. To Compel The Employer :-

If any worker or on the behalf of the workers any person accepts the demand is also unfair labour practice.

4. Illegal Strike :-

If any one supports the illegal strike or instigates others for illegal strike, it is an unfair labour practice on the part of the workers.

5. Go-Slow :-

If a worker reduces the speed of his work and causes damage to the employer it is also unfair practice.

6. Prevention By Temptation :-

Sometimes any worker is offered any advantage to prevent from becoming the member of the trade union. Such type of offer or grant by a worker to other person is also unfair labour practice.

Question No. 11

Circumstances under which contract is valid even without consideration (Also called exceptions of consideration)

Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law

An agreement made without consideration is void, unless-

(1) it is expressed in writing and registered under the law for the time being in force for the registration of⁹[documents], and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1 : Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2: An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Question No. 12

Write Down the Duties and Rights of Bailor and Bailee.

Duties of Bailor	Duties of Bailee	Rights of Bailor	Rights of Bailee
Duty to disclose faults	Duty to take care of goods bailed	Right to claim damages in case of negligence	Right to claim damages
Duty to bear expenses	Duty not to make any unauthorized use of goods	Right to terminate the contract in case of unauthorized use	Right to claim reimbursement of expenses
Duty to indemnify bailee for loss in case of early termination of gratuitous bailment	Duty not to mix the goods bailed with his own goods	Right to claim compensation in case of unauthorized use	Right to be indemnified in case of early termination of gratuitous bailment
Duty to receive back the goods	Duty not to set up an adverse title	Right to claim separation of goods in case of unauthorized mixture	Right to recover loss in case of bailor's defective title
Duty to indemnify the bailee	Duty to return the goods	Right to claim compensation in case of unauthorized mixture of goods	Right to recover loss in case of bailor's refusal to take the goods back
Duty to bear the risk of loss	Duty to return increase	Right to demand return of goods	Right to deliver goods in case of several joint owners
		Right to claim compensation in case of unauthorized retention of goods	Bailee not responsible on re-delivery to bailor without title
		Right to demand increase	Rights of bailor and bailee against wrong-doer
			Right of particular lien