Law Optional Test Series No – 07
De Facto IAS

Total Time Alloted: 3 Hours

Total Marks : 250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

De Facto IAS

Name: ARJIT KUMAR
Subject: Contracts & Mercantile Law
Phone: [redacted]

3:07 hrs

Teacher's Remark

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Section - A

Q.1(a). A minor is liable to pay out of his property for necessaries supplied to him. Discuss with the help of decided cases.(10 Marks, 150 words)

As per section 10 of the Indian Contract act, an agreement with minor is void ab initio. However the necessaries supplied to minor can be recovered from him.

Minor : Not liable under Contract

1) Mohiribibi v. Dharmodas Ghosh – It was held that contract with minor is void ab initio.

2) Khan Gul Khan v. Lakha Singh – Minor was not estopped from putting defence of minority. Contract act being a special law.

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Minor liable to pay out of his property for Necessaries

(1) Section 68 of ICA - stipulates that minor's property may be used for "necessaries" supplied to him "suited to his condition in life"

(2) Khan Gull Khan V. Labha Singh - where ~~minor's~~ court held that any unjust enrichment by the minor is liable to be restored.

(3) Section 33 of Specific Relief Act - ended the controversy by incorporating a provision that minor's property may be used to discharge debt of a person who has supplied necessaries to him.

Hence Minor's property may be utilised for equity.

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Q.1(b) "Public policy was a very unruly horse and when once you get astride it you never know where it will carry you." (Burrough,J.) Examine relevancy of this statement under the Indian Law. (10 Marks, 150 words)

Section 23 of Indian contract Act states that court may hold a contract void, if if is against public Policy or if courts consider it immoral.

Public Policy : Unruly Horse

(1) Because there is no defined criteria for "public policy". "Public Policy" may involve public interest.

(2) Discretion of Judges – which can open pandora's box.

(3) No strict criteria to follow & varies from case to case basis. [ONGC v. Saw Pipes].

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Public Policy : Relevance under Indian Laws :

(1) Upholds Rule of Law : To ensure that none of the parties unjustly benefit or coercion of weaker party [ONGC v. Saw Pipes).

(2) Has to be used within established precedents : In Oberoi v. Mahadeobdas - Court held that public policy has to exercised on limited grounds and under established heads.

(3) Protects the conciousness of Society : Ex: Preemptive Agreements have been declared violative of public policy of India.

Public Policy is an important facet of justice, but should be exercised sparingly so that it does not become unruly horse -

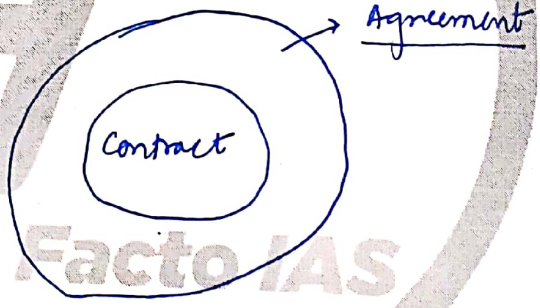
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Q.1(c). Define the terms "agreement" and "contract" and explain the difference between the two. (10 Marks, 150 words)

As per section 2, an agreement is mutual set of promises. However an agreement when enforceable by law becomes a contract.

" Agreement is the genus and Contract is its specie"

Fig: Demonstrating relationship b/w agreement & contract.



Basis	Agreement	Contract
Meaning:	When parties agree to mutual promises, it is an agreement	When Agreement is enforceable in law all it becomes Contract

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Basis	Agreement	Contract
Enforceability	① May or may not be enforceable	① Always enforceable.
Consideration	① ~~May~~ Not Present	① May essential
Illegal ~~Nature~~	① Illegal agreements are not void as initio.	① Illegal agreement is prima facie void.

The difference between Contract & Agreement is essential for us to analyse what agreements will the ~~contract~~ court enforce & what it will not.

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Q.1(d). Differentiate between conditions and warranties under the Sale of Goods Act. What are the implied conditions and warranties in a contract of sale? (10 Marks, 150 words)

Conditions & Warranties are defined in Section 12 of the Sale of Goods Act.

→ core

peripheral

Basis	Condition	Warranty
Meaning :	① Main / Essential stipulation to the main purpose of the contract.	① stipulation which is collateral to the main purpose of the contract.
Remedy for Breach	① Breach gives right to repudiate the Contract	① breach gives right to seek damage from the seller.

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Implied Conditions in a Contract :

1) Title of Goods - that the seller had title to the goods he sold [Rallind v. Walter]

2) Merchantability of the Goods

3) If sale by sample - then the bulk must correspond to the sample.

Implied Warranty

1) Right to enjoy peaceful possession of the goods.

2) Right to the merchantability of goods

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Both Condition & Warranty are important facets of "Sale of Goods Act". It help courts to determine the remedy to be provided to buyer.

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Q.1(e). 'Jurisdiction of a court to decide disputes arising out of contractual relations cannot be ousted by an agreement between the parties.' Discuss. (10 Marks, 150 words)

Section 28 of the Indian Contract Act, 1872 states that an agreement to restrain legal proceedings is VOID. This is so because public policy requires that parties to the contract should not be barred from seeking remedy.

Jurisdiction : Cannot be ousted

(1) Hakkam Singh v. Gammon India - held that agreement cannot oust the jurisdiction of ~~the~~ courts. However "forum selection clauses" were valid.

(2) In Salem Bar Association v. UOI - it was held that to confer jurisdiction on a court which does not possess so, is void.

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What Agreements are valid?

(1) Arbitration Agreements - are valid and courts can refer the matter to arbitration.
[Cheran Varkey v. Afcon Infrastructure]

(2) When there is option to either prosecute or bring a civil suit - Ex: Matrimonial dispute - wife can file suit for maintainance and avoid other charges.

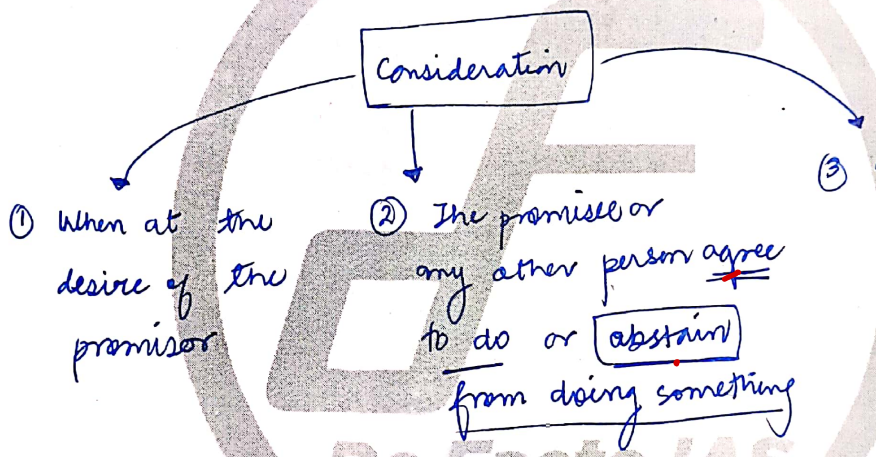
(3) ~~Others~~ liability in Tort is not excluded - even stronger contractual remedy may be otherwise.

Thus, an agreement to absolutely bar jurisdiction of courts is void. However forum selection clauses & Arbitration agreements are valid. This ensures that parties have appropriate remedy.

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Q.2(a). What do you mean by 'Consideration" ? Can a contract be valid without consideration? If yes, Elucidat with help of case laws(20 marks)

Section 2(d) of the contract ~~states that when~~: Act defines consideration. Its constituent elements are :



Consideration : Meaning

1) At the desire of the promisor :

① The act done must be at the desire of the promisor and not by itself.

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DPJ. Baldeo

① Kedar Nath v. Gorie Mohd - Construction of "Townhall" was undertaken on promise of subscription of defendant. It was held that plaintiff changed his position at "desire of promisor".

① Durga Prasad v. Baldeo - Shopping mall constructed on orders of DM. Held not a valid consideration.

② Promisee or any other person:

① Consideration can from either from promisee or any other person.

① Venkata Chinnaya Garu v. Venkata Ranmaya Garu - old lady furnished the consideration on behalf of the brother and hence transfered the estate to her daughter. This was held as valid consideration.

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(3) Act or Abstinence is Consideration :

Where the promisee has done an act or refrained from doing any act.

Can a contract be Valid Without Consideration

NO : As per section 25 of Indian Contract Act, an agreement without consideration is VOID.

Raj Manohar v. Sheetal Devi – held since no consideration followed, agreement was void.

Yes : Agreement w/o Consideration is Valid

Explanation II to Section 25 states agreement w/o consideration is valid if :

1) Parties standing in Near Relation with each other and agreement is in writing as registered. Kishore v. MTC & Co – brother agreed to pay debts of his deceased brother.

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(2) Agreement to pay debt for a Time barred debt.

(3) Agreement for past voluntary action.

Other instances also where agreement w/o consideration is valid

(1) Contract of Agency.

(2) Judiciary Conferred Obligations

(3) Merger / Acquisition

Thus approach to consideration is much nuanced and has to be seen on case to case basis.

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Q.2(b). What are the major principles governing the Contract of insurance? (15 marks)

Contract of Insurance is a contract whereby one party (Insurer) agrees to pay the other party i.e. Insurance holder in the event of happening of a certain event.

Ex: Health Insurance - for health expenditure.

Principles of Insurance

① Insurance is not Indemnity -

- Indemnity (Section 12) is to make good for loss due to acts of human agency (either the ~~human agency~~ promisor himself or the third party)
- Insurance is compensate for loss due to non-human intervention

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(2) Insurance is not a Wagering Contract :

- A contract by way of wager is void.
- Insurance contract is valid since parties are interested in happening / non-happening of the events.

(3) Insurance is contingent Contract :

- Insurance contract is a contract that is contingent on happening / non-happening of a certain event.
- Insurance contracts provide sufficient backing to the the person insured for the unforeseen circumstances.

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What Insurance Actually is, then ?

Insurance is :

- Contingent Contract
- to protect against unforseen circumstances
- Parties are interested in outcome of the event

Insurance Contract protect the individual against unforseen losses. Hence Insurance contract are important for social well-being of an individual.

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Q.2(c). All contracts in restraint of trade are prima facie void, but are valid if they are reasonable.' Explain how the reasonableness of restraints can be tested. | (15 marks)

As per Section 27 of Indian Contract Act, agreements in restraint of trade are void. This is because everyone has right to practice any profession / trade / business as per Article 19(1)(g) of the Indian Constitution.

Restraint of Trade: Void

1) Where there are no territorial limits defined:

① Nordenfelt v. Nordenfelt Gunfield Co - The outgoing partner was absolutely ~~bar~~ restrained from practicing the business similar to that of the company. Held: Unreasonable.

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2) When no time period is defined:

① When the outgoing partner was restrained to never indulge in same business as that of firm. It was held unreasonable.

Restraint of Trade : When Valid

① Sale of Good Will - where the outgoing partner is restrained to carry on the business for limited territorial jurisdiction and limited time. It was held reasonable restriction.

② During Continuation of Partnership firm (section 11(2) of Partnership Act: during continuance of firm, partners may be restricted to not ~~carry~~ out similar business.

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(3) Outgoing Partner (Section 36(2) of Partnership Act).

① outgoing partner may be restrained for specific time = period and specific territorial limits.

→ Judicial approach

How to test Reasonableness of Restraint

① When there is partial restraint

② When there is sale of good. will =

③ limited Time

④ Restraint within specified territorial limits.

Thus from above, it is clear that "partial" restraint is criteria for reasonable restriction on trade.

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Q.3(a). Discuss the concepts of "coercion" and "undue influence" in the context of consent under Contract Act. (20 marks)

As per section 10 of the Indian Contract Act, for a valid agreement "consent" must be "free".

Section 14 of Indian Contract Act defines **free consent** as consent which is not influenced by : coercion, undue influence, fraud, misrepresentation and mistake.

Coercion in Contract Act

Section 15 defines coercion as : anything which is done or threatened to do an act which is an offence under Indian Penal Code

OR

which threatens or puts any person in fear of taking away of person or property ;

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① Coercion : As offence under IPC

⊙ If any offence under IPC is committed or threatens any person to commit such act and thereby inducing any person to enter into contract.

Illustration : 'A' puts a gun on "B's" head and forces him to sign a contract for sale of his car.

② Coercion : Putting property in possession :

⊙ If any property is taken/ threatens to taken, and thereby induces any person to sign a contract.

Illustration : 'A' threatens 'B' to put fire in his crop fields if he does not sign contract. Such consent is not free.

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Undue influence in Contract Act :

→ Section 16 of Indian Contract Act defines Undue Influence

Elements of Undue Influence

① One party is able to dominate the will of another

② Due to relations subsisting between the parties

③ The another party "induces" and takes undue advantage.

Base of Fact

① Able to dominate the will of another :

- Ex ~~Acts~~ Relationship of Trust.
- Contract with person unable to understand the consequences.
- Fiduciary Relationship.

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(iii) Undue influence is a situation where a contract is made. Such contract no same person would enter and no honest person would take advantage of.

Eg: Central Inland Transport v. Brojonath Ganguly – where Undue influence was exercised by employer to influence the person to enter a contract.

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Both coercion & Undue influence make the contract voidable at the option of the parties. Thus protect rights of parties.

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Q.3(b). Discuss the role and importance of the arbitration agreement under the Arbitration and Conciliation Act, 1996. What are the essential elements that constitute a valid arbitration agreement? Is stamping of agreement essential? (15 marks)

As per section 7 of Arbitration & Conciliation Act, an Arbitration Agreement is an agreement whereby parties to contract agree to submit their disputes arising out a contract to the Arbitral Tribunal for adjudication.

Role of and Importance of Arbitration Agreement

1) Helps to determine clear intention of parties whether they agreed to submit to arbitration their disputes or not.

2) Helps determine the scope of disputes which can be referred to arbitration.

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3) Helps determine the procedure which needs to be followed under Arbit & Conciliation Act

4) Help decide "seat of arbitration" and "venue of arbitration"

5) Help determine the strength of Arbitral Tribunal.

6) Help determine the dispute resolution mechanisms – involvement of experts, etc or not.

Benefits of Arbitration

1. Cost effective
2. Speedy Remedy
3. Technical experts can be involved as Arbitrators.
4. Confidentiality of Proceedings.
5. Reduces burden of Court

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Essential Elements of Arbitration Agreement:

1. Must be written form.
2. Must be in separate agreement or specific clause.
3. Must contain procedure to be adopted.
4. Should provide "scope of disputes" to be adjudicated.
5. Must be duly stamped.

Is Stamping Essential: Yes

Stamping is essential if parties want to enforce the contract. An agreement without proper stamping will not be accepted as valid evidence in Court of law as per Section 35 of Indian Stamp Act.

Arbitration can be the boon for overburdened Indian Judiciary.

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Q.3(c). How is an agency relationship created according to the Indian Contract Act? What are the general duties of an agent towards the principal?(15 marks)

As per Section 182 of Indian Contract Act, an agent is a person who represents another (principal) in dealing with third person and creates legal relations between them

Essentials of Valid Agency Relationship

(I) Principal must be in existence and Competent to contract.

(II) How is Agency Relationship created

(1) Express Authority :

① When principal has given express ~~notice~~ authority to ~~principal~~ agent to act on behalf of the principal.

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(2) Implied Authority / Necessity : where circumstances demand that agent has acted for Principal

(3) Agency created by Ratification :

- ① Where Principal has ratified the act of the Agent.
- ① Ratification extends to full transaction.

(4) Agency in case of Wife-Husband : Except where :

- ① husband has clearly instructed wife not to transact on behalf of him.
- ① OR Notice given to third person, not to supply goods/ credit to wife.

(5) Creation of Agency by Operation of Law :

- ① Minor's agent → guardian.
- ① Court appoints agent of an ~~incompetent~~ unsound person.
- ④

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Duties of Agent towards Principal

1. Duty not to delegate unless (Section 230)
   - consent of Principal
   - nature of work requires
   - custom trade
   - Agency not of "personal service"
2. Agent to disclose all details account and secret profits.
3. Agent to act solely for Principal's interest
4. Render all accounts & profits. (Section 232(1))
5. Duty to protect interest of Principal in case of his death.
6. Duty to act in best interest of Principal.

Agent has authority to make the Principal liable to 3rd persons. Hence agent should act responsibly within powers conferred to them.

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Q.5(a). Explain the concept of "communication of offer" and "communication of acceptance.(10 Marks, 150 words)

An offer is a proposal to do or abstain from doing anything in order to obtain the assent of another person [Section 2(a)]

Acceptance is agreeing to the proposal made by the offeror. [Section 2(b)]

Communication of Offer : Meaning

1. Communication must be by the offeror himself : Felthouse v. Bindley.
2. Communication with intention to Contract
3. Communication of Offer — General : ⊙ Lalman Shukla v. Gauri Dutt.
   — Specific
4. Communication of offer when complete –
   ⊙ Against the proposer – when it is conveyed to

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other party.

Communication of Acceptance: Meaning

(1) Communication of Acceptance by ~~Promisee~~ Acceptor himself

Powell v. Lee: where it was held that decision of recruitment should have been conveyed by the ~~Head~~ management itself.

(2) Acceptance = Absolute & Unqualified (Section 7)

(3) When Acceptance Complete (Section 5)

(i) Against the Proposer - when it is put in course of transmission and outside control of acceptor.

(ii) Against Acceptor: when it is conveyed to proposer.

Offer and Acceptance form important part of contract and hence must complete.

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Q.5(b). "The individual deserves to be protected against the possibility of exploitation inherent in 'Standard Form of Contract." Explain. (10 Marks, 150 words)

In a standard form of contract the dominant party exploits the vulnerabilities of weaker party. Hence courts have held in several cases, the safeguards for weaker party.

Safeguards for Weaker Party

(1) Reasonable Notice:

- Henderson V. Stevenson – where back of ticket liability of defendant was limited. Court held – notice to be provided.

(2) Notice Contemporaneous with the Offer:

Olley V. Marlborough – Hotel Room taken – written no liability of Hotel. Held Unreasonable.

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(3) Performance of Core Obligation : No Exemption provided

① Robinson v. Eastern Railway Co - Luggage in cloak room. Held cannot exclude liability.

(4) Unreasonable Terms | Service Contract

Central Inland Transport Co v. Brojonath Ganguly - Held Termination without notice was unreasonable.

Standard Form of contract have standard clauses which are reason for exploitation of weaker party. Thus courts have interfered and protected rights of weaker party.

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Q.5(c) "Law as well as justice should try to prevent unjust enrichment. Critically examine this statement in relation to quasi-contracts." (10 Marks, 150 words)

Quasi Contracts are contracts which are contract not in its true sense. These are "implicit contracts". Thus principle of equity & justice requires that there must not be any unjust enrichment in such cases.

Quasi Contracts : Unjust Enrichment

(1) Supplies of Necessaries to a person incapable to contract (Section 68):

- ⊙ supply of necessaries.
- ⊙ to a person incompetent to contract
- ⊙ to suit his way of life.

~~Ex: Mahadubbi~~

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(2) Payment by person interested in property (Section 69)

- ⊙ payment by a person
- ⊙ for ~~pay~~ debt owned by ~~others~~.
- ⊙ person interested in such ~~payment~~ property

Illustration: Tenant pays dues ~~of~~ landlords land.

(3) Payment for non-gratitnous Act (Section 70)

(4) Payment for anything done or goods delivered by mistake or under coercion (Section 72).

Ramprakash v. Kauli Devi – where money paid by mistake. Held can recover

Quasi Contracts are essential for equity & justice & to prevent unjust enrichment

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Q.5(d). Discuss the law Related to Acceptance and Communication Under COntract Act, 1872. How 'offer' is different form 'invitation to Offer'? (10 Marks, 150 words)

When one person signifies his assent thereto to another who has made an offer.
It is said to be acceptance [Section 2(b)].

Law Related to Acceptance

(1) Acceptance must be absolute and unqualified [Sec].
   ① There cannot be partial acceptance.

(2) Acceptance with modifications is counter offer

Communication of Acceptance

(1) Acceptance Complete against Proposer – when it is put in course of transmission and is outside the control of Acceptor. [Section 4].

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(2) Acceptance completed against Acceptor - when it ~~com~~ comes to knowledge of proposer [Section 5].

(3) Acceptance Communicatin by the Acceptor himself - Eg: ~~Felthouse v. Bindley~~; "Powell v. Lee"

(4) ~~Acceptance~~

Offer v. ~~Acceptance~~ Invitatin to Offer

Offer: As per section 2(a), final proposal

Invitatin to Offer: ① not final proposal;
② willing to negotiate.

Pharmaceutical Society of Britain v. Boots Cash Chemist - held that goods displayed on display ~~are not of~~ with price tags are not offer but invitatin to offer.

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Q.5(e). What are the essential elements required to form a valid partnership? Differentiate between a "partnership at will" and a "particular partnership.(10 Marks, 150 words)

As per Section 4 of Indian Partnership Act 1932, partnership is an agreement, where parties have agreed to share the profits of the firm for the bussiness carried by all or any of them.

Essential elements of Valid partnership

1. Must be an agreement (oral/written)
2. Two or more parties
3. Agreement to share profits of firm
4. Firm must carry a business which is managed by all or any of the partners.
5. Requisites of valid agreement need to follow.

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Partnership at will	Particular Partnership
(1) Formed for indefinite time;	(1) Formed for particular transaction.
(2) Ends by mutual consent of parties	(2) Ends after the work is done.
(3) Notice to be given for dissolution of such partnership.	(3) No notice is required

Partnership is an essential attribute of commercial entity which allows people to form entity any carryout business.

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Q.6(a). Every contract contains a 'core' or fundamental obligation which must be performed, if one party fails to perform this fundamental obligation, he will be guilty of a breach of contract whether Or not any exemption clauses has been inserted which purports to protect him. (20 marks)

Every contract made, there is a possibility that the stronger/dominant party may take "undue advantage" by inserting Standard clauses in the agreement of which the weaker party may not be aware.

These standard clauses may exempt the dominant party from performing its core obligations or functions.

Protection of Rights of People in Standard Contract

① Reasonable Notice - parties must give "reasonable notice" to the other while they provide any copy of agreement.

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Illustration : Goods deposited in locker and on back of receipt mentioned – " only liable for 20 $ ". Held unreasonable as no notice provided.

(2) Notice provide must be Contemporaneous to the event:

Eg: Olley v. Marlborough – where when claimant entered the hotel room, it was mentioned no safety of goods shall be responsibility of Hotel.

(3) Core Obligation / Fundamental Breach of terms :

→ Henderson v. Stevenson : It was held that merely by printing on back of steamer ticket, the other party cannot claim its liability.

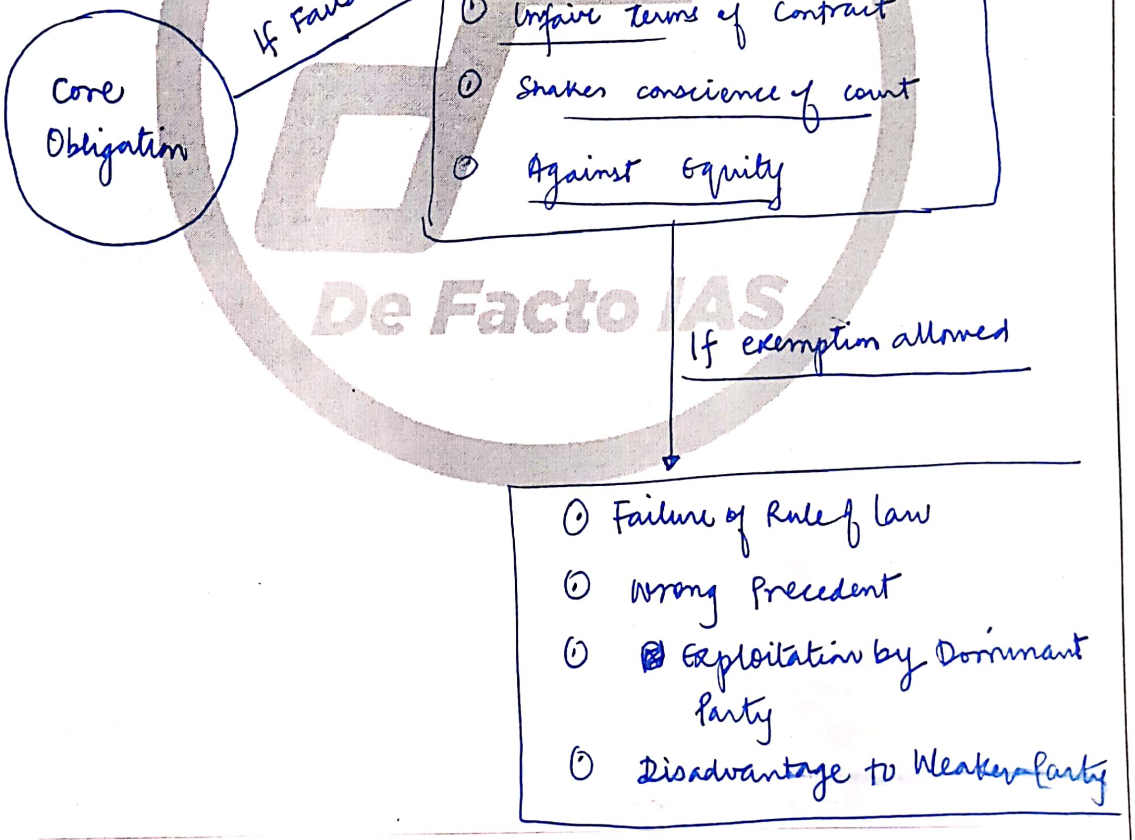
→ Robinson v. Eastern London Railway Co : It was held that there are certain core obligations which cannot be excluded.

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(4) Unconscionable Agreements / Service Agreements

Brojonath Ganguly v. Central Inland Transport Co -

It was held that agreement at prima facie was so unreasonable, that it could not be given effect to.



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Approach of Courts:

(1) Protect the right of weaker party.

(2) Not allow breach of core / fundamental obligations of parties.

(3) Exemption clauses do not waive the principles of justice, equity and good conscience.

Hence, to protect the rights of weaker party and ensure fair play, such exemption clauses have to be ignored.

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Q.6(b). Explain the key differences between a contract of indemnity, guarantee, and Contract of insurance.(15 marks)

A contract of Indemnity is defined under Section 124 of Indian Contract Act whereas guarantee is defined under Section 126 of Indian Contract Act. Insurance is a contingent contract.

Indemnity	Guarantee	Insurance.
① 2 parties involved – Indemnifier & Indemnified	① 3 parties involved – Surety, Principal Debtor and creditor	① 2 people – Insurer & insured.
② & one Contract	① 3 contracts 1st – b/w Principal Debtor & creditor 2nd – Creditor & Surety 3rd – Surety & Principal Debtor	② one contract only.

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Indemnity	Guarantee	Insurance.
(3) Loss due to "human agency" only	(3) loss due to any factor	(3) loss, not due to human agency.
(4) Primary liability is of Indemnifier.	(4) Primary liability is of Principal Debtor.	(4) No liability unless occurence of event.
(5) Liability is subsisting & absolute.	(5) Liability is contingent & secondary	(5) Liability is subsisting / contingent on happening or non-happening of event.
(6) Expressly mentioned in Indian Contract Act (section 124)	(6) Expressly mentioned in Indian Contract Act (s.126)	(6) Not expressly mentioned.

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Idemnity	Guarantee	Insurance
(7) Not contingent contract	(7) Not a contingent Contract	(7) Its a type of contingent contract.
(8) Remedy is to ask for – all losses, damages, costs	(8) ~~invoke~~ Remedy is suit against surety	(8) Remedy = as per terms of insurance

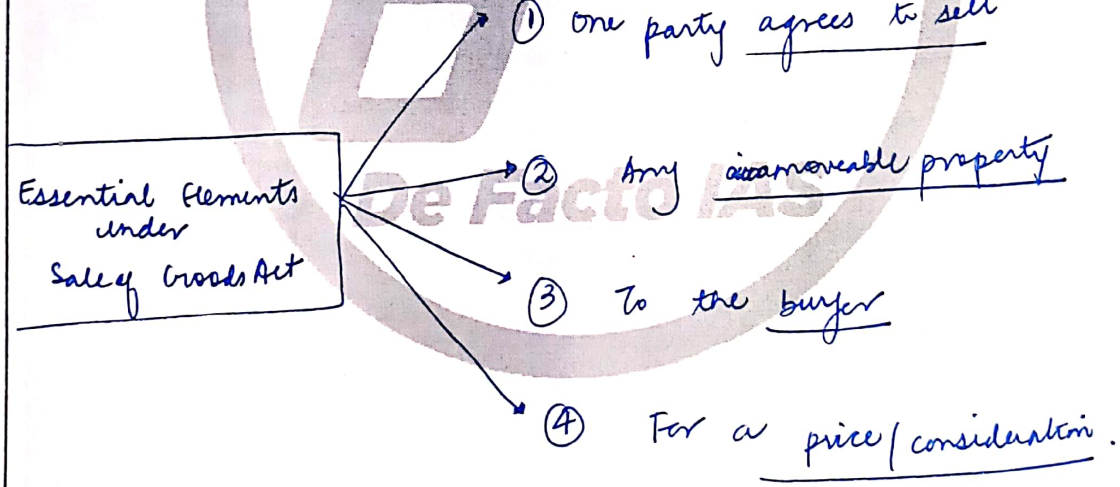
Indemnity, Guarantee & Insurance have minor variations due to which the commercial requirements are fulfilled.

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Q.6(c). What are the essential elements of a contract of sale under the Sale of Goods Act?Differentiate between a "sale" and an "agreement to sell" under the Act. (15 marks)

Section 4 of Sale of Goods Act defines Sale. Sale of Goods Act provides a framework whereby parties agree to sell goods for a consideration to buyer.



Essential elements are :

① There must be two parties (buyer & seller)

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② Goods must be Movable

③ Consideration must be there (price | consideration)

Basis	Sale	Agreement to Sale
Meaning	① Means goods has passed to the buyer.	① Means goods will be passed to the buyer at future date & time
Type of Contract	① Executed Contract	① Executory Contract
Right to Re-sell	① Not Available	① Available to seller.
Remedy for breach	① Suit for price and damage	① No suit for price. Can only recover damages.

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Basis	Sale	Agreement to Sell
Existence of Goods	① Goods have to be in existence at time of sale.	① ~~Not~~ Goods need not be existence, can be sale for anticipation of goods.

~~Right to~~ Sale and Agreement to Sale are two different concepts in Mercantile law.

Buyer must be aware of what he/she is actually agreeing to.

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