Q- What do we understand by Free Consent. Also state the situations when consent of party is not free?

Ans. As per the provisions of Indian Contract Act,1872 “two or more persons are said to consent when they agree upon the same thing in the same sense.” Consent is said to be free when it is not caused by:

1. Coercion

2. Undue Influence

3. Fraud

4. Misrepresentation

5. Mistake.

When consent to an agreement is caused by coercion, fraud, misrepresentation, or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. When the consent is vitiated by mistake, the contract becomes void.

(I) Coercion (Section 15)

“Coercion’ is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.”

(II) Undue influence (Section 16)

“A contract is said to be induced by ‘undue influence’ where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other”.

A person is deemed to be in position to dominate the will of another:

(a) Where he holds a real or apparent authority over the other; or

(b) Where he stands in a fiduciary relationship to the other; or

(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.

(III) Fraud (Section 17)

‘Fraud’ means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Effect of Fraud upon validity of a contract: When the consent to an agreement in caused by the fraud, the contract is voidable at option of the party defrauded and he has the following remedies:

(1) He can rescind the contract within a reasonable time.

(2) He can sue for damages.

(3) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

Mere silence is not fraud

A party to the contract is under no obligation to disclose the whole truth to the other party. ‘Caveat Emptor’ i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly there is no duty to disclose facts which are within the knowledge of both the parties.

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

(IV) Misrepresentation (Section 18)

Misrepresentation means and includes -

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Legal effects of agreements without free consent - (Section 19)

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

(v) Mistake: Mistake means innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either Bilateral or Unilateral.

Bilateral mistake is when both the parties to a contract are under a mistake.

Unilateral mistake is when only one party to the contract is under a mistake.

Effect of mistake on validity of a contract:

Mistake is some unintentional act, omission or error, arising from unconsciousness, ignorance or forgetfulness, imposition or misplaced confidence. It may be of two kinds-

(i) Mistake of Law: A mistake of law does not render a contract void as one cannot take excuse of ignorance of the law of his own country. But if the mistake of law is caused through the inducement of another, the contract may be avoided. Mistake of foreign law is excusable and is treated like a mistake of fact. Contract may be avoided on such mistake.

(ii) Mistake of fact: Where the contracting parties misunderstood each other and are at cross purposes, there is a bilateral or mutual mistake. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void

Q- State the Agreements that are opposed to public policy?

Ans. Following are the Agreements opposed to public policy

(1) Trading with enemy: Any trade with person owing allegiance to a Government at war with India without the license of the Government of India is void, as the object is opposed to public policy.

 (2) Stifling Prosecution: An agreement to stifle prosecution i.e. “an agreement to present proceedings already instituted from running their normal course using force” tends to be a perversion or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony.

(3) Maintenance and Champerty: Maintenance is an agreement in which a person promises to maintain suit in which he has no interest. Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.

(4) Traffic relating to Public Offices: An agreement to traffic in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested.

(5) Agreements tending to create monopolies: Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.

(6) Marriage brokerage agreements: An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy. For instance, an agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void.

(7) Interference with the course of justice: An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy. An agreement which contemplates the use of under-hand means to influence legislation is void.

(8) Interest against obligation: The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy. An agreement by an agent to receive without his principal’s consent compensation from another for the performance of his agency is invalid.

A, who is the manager of a firm, agrees to pass a contract to X if X pays to A `200,000 privately; the agreement is void.

(9) Consideration Unlawful in Part: The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void.

(10) Agreement in restraint of marriage: Every agreement in restraint of marriage of any person other than a minor, is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding and considered as void agreement.

(11) Agreement in restraint of trade (Section 27): An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But this rule is subject to the following exceptions:

(1) Where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid (goodwill is the advantage enjoyed by a business on account of public patronage and encouragement from habitual customers). The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

(2) The Indian Partnership Act, 1932 if an outgoing partner makes an agreement with the continuing partners that he will not carry on any business similar to that of the firm within a specified period or within specified local limits, such an agreement, thought in restraint of trade, will be valid, if the restrictions imposed are reasonable. Similarly, under Section 11 of that Act an agreement between partners not to carry on competing business during the continuance of partnership is valid.

(3) An agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

(12) Agreement in restraint of legal proceedings: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court or which abridges the usual period for starting legal proceedings. A contract of this nature is void.

Q- What do we understand by Wagering Agreements? Explain with examples?

Ans. Wagering agreement (Section 30): An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has

legitimate interest.

Essentials of a Wager

1. There must be a promise to pay money or money’s worth.

2. Promise must be conditional on an event happening or not happening.

3. There must be uncertainty of event.

4. There must be two parties, each party must stand to win or lose.

5. There must be common intention to bet at the timing of making such agreement.

6. Parties should have no interest in the event except for stake.

Transactions similar to Wager

(i) Lottery transactions: A lottery is a game of chance and not of skill or knowledge. Where the prime motive of participant is gambling, the transaction amounts to a wager.

(ii) Crossword Puzzles and Competitions: Crossword puzzles in which prizes depend upon the correspondence of the competitor’s solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.

(iii) Speculative transactions: An agreement or a share market transaction where the parties intend to settle the difference between the contract price and the market price of certain goods or shares on a specified day, is a gambling and hence void.

(iv) Horse Race Transactions: A horse race competition where prize payable to the bet winner is less than ` 500, is a wager. Transactions resembling with wagering transaction but are not void

1. Chit fund: Chit fund does not come within the scope of wager. In case of a chit fund, a certain number of persons decide to contribute affixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
2. Commercial transactions or share market transactions: In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
3. Games of skill and Athletic Competition: Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid.
4. A contract of insurance: A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

Q- State the ways of Discharge of Contract?

Ans. A contract is discharged when the obligations created by it come to an end. A contract may be discharged in any one of the following ways:

1. Discharge by performance: It takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be

(1) Actual performance; or

(2) Attempted performance.

2. Discharge by mutual agreement: The Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed. The principles of Novation, Rescission, Alteration and Remission are already discussed in previous question.

3. Discharge by impossibility of performance: The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:

 Change in law

 Destruction of the subject-matter essential to that performance

 Non-existence or non-occurrence of particular state of things

 Declaration of a war

4. Discharge by lapse of time: A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

5. Discharge by operation of law: A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.

6. Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract.

 If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof.

 On the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach.

 If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract

Q. -How the contract is discharged by mutual agreement?

Ans. A contract is discharged by mutual agreement in the following ways:

“If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original

contract need not be performed”

 Novation: The parties to a contract may substitute a new contract for the old. If they do so, it will be a case of novation. On novation, the old contract is discharged and consequently it need not be performed.

 Rescission: A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place.

 Alteration: The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one. In other words, the distinction between novation and alteration is very slender.

Difference between Novation and alteration:

Novation

It means substitution of an existing contract with a new one. Novation may be between same parties or there may be a change in the contracting parties. In case of novation there is altogether a substitution of new contract in place of the old contract.

Alteration

Alteration the terms of the contract may be altered by mutual agreement by the contracting parties But the parties to the contract will remain the same. In case of alteration it is not essential to substitute a new contract in place of the old contract. In alteration, there may be a change in some of the terms and conditions of the original agreement.

 Remission or Waiver: “Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks t”. In other words, a contract may be discharged by remission.