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**SUGGESTED SOLUTION**

**CA FOUNDATION M'19 EXAM**

**SUBJECT- LAW**

**Test Code – CFN 9111**

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## ANSWER-1

### ANSWER-A

As per Section 2(h) of Indian Contract Act, 1872 Contract is an agreement which is enforceable by law. Social agreements are not enforceable by law. As per case law Balfour v. Balfour, a husband promised to pay maintenance allowance every month to his wife, so long as they remain separate. When he failed to perform this promise, she brought an action to enforce it. As it is an agreement of domestic nature, it was held that it does not contemplate to create any legal obligation.

Father promised to pay his son a sum of one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. This a social agreement which is not enforceable by law. Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of 1 lakh from father for the reasons explained above.

(3 MARKS)

### ANSWER-B

Situation	Example
a) <b>Trust or Charge</b> : Beneficiary of a Trust or other interest in specific immovable property, can enforce it even if he is not a party named in the Trust Deed.	A agree to transfer certain properties to be held by T in trust for the benefit of B. B can enforce the agreement even though he is not a party to the agreement. <b>[MK Rapai vs John]</b>
b) <b>Marriage Settlement, Partition and other Family Arrangements, and such agreement is reduced to writing.</b>	Two brothers, on partition of joint properties, agreed to invest in equal shares a certain sum of money for the maintenance of their mother. Held she was entitled to require her sons to make the investment. <b>[Shuppu Ammal vs Subramaniyam]</b>
c) <b>Acknowledgement of liability, or by past performance thereof</b>	X receives money from Y for paying it to Z. X admits the receipt of that amount to Z. Z can recover the amount from X, even though the money is due from Y.
d) <b>Assignment of a contract</b> : Where a benefit under a Contract has been assigned, the assignee can enforce the Contract subject to all equities between the original parties to the Contract.	The assignee of an Insurance Policy.
e) <b>Contracts entered into through an Agent</b>	Where the agent has acted within his capacity and in the name of his principal.
f) <b>Covenants running with land</b>	In cases of transfer of immovable property, the purchaser of land who has notice that the owner of the land is bound by certain conditions or covenants created by an agreement affecting the land, shall be bound by such conditions, even though he is not a party to the original agreement containing those conditions or covenants.

**ANSWER-2**

**ANSWER-A**

- (a) **Uncertain Event** : Uncertainty may be due to – (i) the event is yet to take place or (ii) it might have already happened but the parties are not aware of its result.
- (b) **Mutual chances of gain or loss** : Each party should to win or lose. If either of the parties may win but cannot lose, or both may lose and cannot win, it is not a Wagering Agreement.
- (c) **Neither party to have control over event** : No party should be able to control the **happening or non happening** of the contingent event. Where one party has control over the event, the transaction is not a wager.
- (d) **No other interest in the event** : Neither party should have **interest in the happening (or non – happening) of the event** other than the sum or stake he stands to win or lose.
- (e) **Money or money's worth** : To constitute wager, the promise should be to pay money or money's worth only.

(5\*1 = 5 MARKS)

**ANSWER-B**

**1. Obligations of parties to contracts (Section 37)**

**The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.**

Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

**Example 1** : A promises to deliver goods to b on a certain day on payment of 1,00,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay 1,00,000 to A's representatives.

**Example 2** : A promises to pain a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representative or by B because it involves use of personal skill.

(2.5 MARKS)

**Analysis of Section 37**

A contract being an agreement enforceable by law, **creates a legal obligation**, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.

**The basic rule is that the promisor must perform exactly what he has promised to perform.** The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in Section 37.

Thus, **it is the primary duty of each party to a contract to either perform or offer to perform his promise.** He is absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

(2.5 MARKS)

### ANSWER-3

### ANSWER-A

The stated problem falls under the head 'anticipatory breach of contract' as per The Indian Contract Act, 1872. **Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived.** In such a situation the promisee can claim compensation by way of loss or damage caused to him by the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfillment of the promise by the promisor is over. As per details in the problem, price as contracted Rs. 40 per kg on 10.11.2006 rose to Rs. 50 per kg as on 4.12.2006 and finally to Rs. 53 per kg. On 09.12.2006. The answer to the problem is that

(2 MARKS)

1. Mr. Ramaswamy can repudiate the contract on 04.12.2006 and can claim damages of Rs. 10 per kg viz. Rs. 1,00,000.
2. He could wait till 09.12.2006 and claim Rs. 1,30,000 i.e. Rs. 13 per kg.
3. If the Government, in the interim period i.e. between 04.12.2006 and 09.12.2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Ramaswamy will not be able to recover any damages whatsoever.

(3\*1 = 3 MARKS)

### ANSWER-B

Basis	Void Contract	Voidable Contract
<b>1. Meaning</b>	<b>Sec.2(j)</b> : A Contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.	<b>Sec.2(i)</b> A Voidable Contract is one which may be repudiated at the will of one or more of the parties but not at the will of the other or others.
<b>2. Nature</b>	<ul style="list-style-type: none"> <li>• At the time of making, it is valid.</li> <li>• Subsequently it becomes unenforceable due to some defect.</li> </ul>	It is <b>voidable</b> at the option of the aggrieved party and remains valid till rescinded by him.
<b>3. Rights</b>	It does not provide any legal remedy for the parties to the contract. Even	Aggrieved party gets a right to rescind the contract. When he rescinds it,

	the Court will not permit performance of the Contract even if the parties desire.	contract becomes void. In case he does not rescind the contract within a reasonable time, it remains valid.
<b>4. Example</b>	A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The Contract becomes Void.	D was enfeebled by disease. B, his medical attendant influenced him to agree to pay B an unreasonable sum for his professional services. B employs undue influence. D's consent is not free and can set aside the Contract.

(5 MARKS)

#### ANSWER-4

#### ANSWER-A

**Quasi Contracts :** Under certain special circumstances obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi – contracts'. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another. The salient features of a quasi – contract are :

(1 MARK)

1. It **does not arise from any agreement of the parties concerned** but is imposed by law.
2. **Duty and not promise is the basis of such contract.**
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
4. Such a **right is available against specific person(s)** and not against the whole world.
5. A **suit for its breach may be filed in the same way** as in case of a complete contract.

(5 MARKS)

#### ANSWER-B

**Definition of Consideration – Section 2(d) :** “When at the desire of the promisor, the promisee or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise”.

The **essential characteristics of a valid consideration are as follows :**

- (1) Consideration **must move at the desire of the promisor**
- (2) It may **proceed from the promisee** or any other person on his behalf.
- (3) It may be **executed or executor**. It may be past, present or future.
- (4) It must be **real and have some value in the eyes of law.**
- (5) It must **not be something which the promisor is already legally bound to do.**
- (6) It must **not be unlawful, immoral or opposed to public policy.**

- (7) Inadequacy of consideration does not invalidate the contract. Thus, it need not be proportionate to the value of the promise of the other.
- (8) It may comprise of some benefit, profit, right or interest accruing to one or some loss, detriment, obligation or responsibility undertaken by the other.

(8\*0.5 = 4 MARKS)

#### ANSWER-5

#### ANSWER-A

According to **Section 56 of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility'** (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently). But impossibility of performance is as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

(2 MARKS)

The performance does not become absolutely impossible on account of strike, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract.

In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. **This difficulty in performance cannot be considered as impossible of performance attracting Section 56 and hence Mr. Akhilesh is liable to Mr. Shekhar for non – performance of contract.**

(2 MARKS)

#### ANSWER-B

The following transactions are not considered as Wagering Agreements –

1. **Sale and Purchase of Shares, Stock or Goods** : Transactions for sale and purchase of Stocks and Shares or for sale and delivery of goods, with a clear intention to **give and take delivery of shares or goods are not Wagers**. However, if the intention is only to settle the price difference, the transaction is a Wager and hence void.
2. **Competitions**: Prize Competitions which involves skill, e.g. picture puzzles, crossword competitions, athletic competitions, etc, are not Wagers. As per the Prize Competition Act, 1955, prize competitions in game of skill are not wagers provided the prize money does not exceed Rs. 1,000.
3. **Horse Race Contributions [Exception to Sec. 30]**: A subscription / contribution made for, or an Agreement to subscribe / contribute entered into towards, any plate, prize or sum of money, of the value or amount of Rs. 500 or more, to be awarded to the winner of a horse race, is valid.
4. **Contracts of Insurance** : Contract of Insurance are not Wagering Agreements even though the payment of money by the insurer may depend upon a future uncertain event. Insurance Contracts differ from Wagering agreements in following respects –

<b>Contract of Insurance</b>	<b>Wagering Contracts</b>
They are <b><u>legal and are valid contracts</u></b> on proper payment of premiums.	They are <b><u>illegal and are void.</u></b>
They are <b><u>beneficial to the public</u></b> , acts as a measure of investment.	They are <b><u>considered against public policy.</u></b>
Risk calculation and setting of premiums involves actuarial skills.	It is merely a gamble and no skill is involved.
It is a <b><u>contract of indemnity.</u></b>	There is <b><u>no indemnification to the losing party.</u></b>
The assured has an <b><u>insurable interest.</u></b>	There is <b><u>no interest except for the amount under debt.</u></b>
Both parties are interested in protection of the subject matter, i.e. goods (Fire and Marine Insurance) or life.	Only one party is interested in the protection of the subject matter.

(6 MARKS)