Business and Commercial Law.

Knowledge Level.
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Contract Act 1872.

1. What is contract?
An agreement enforceable by law is a contract. Therefore in a contract there must be –
   i). an agreement
   ii). the agreement must be enforceable by law.
There some agreements like an agreement to play cards or to go to a cinema, which cannot be enforced through the courts of law, are not contract. So an agreement, which can be enforced through the courts of law, is called a contract.

2. What are the elements of a contract?
An agreement becomes enforceable by law when it fulfills certain conditions. These conditions, which may be called the essential elements of a contract, are explained hereunder:
   i). Offer and acceptance
   ii). Intention to create legal relationship
   iii). Lawful consideration
   iv). Capacity of the parties
   v). Free consent
   vi). Legality of the object
   vii). Certainty
   viii). Possibility of performance
   ix). Void agreement
   x). Writing, registration and legal formalities.

3. Definition of acceptance & proposal.
Proposal: When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
Offer: A proposal is also called an offer. The promisor or the person making the offer is called offeror. The person to whom the offer is made is called the offeree.

4. When is the communication of proposal and acceptance complete?
Completion of proposal:
The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

5. How and when can be revoked a proposal and acceptance?
Revocation/Lapse of proposal:
A proposal comes to an end, and no longer opens to acceptance under the following circumstances:
   i). By notice
   ii). By lapse of time
   iii). After expiry of reasonable time
   iv). By failure of reasonable time
   v). By failure of a condition precedent
   vi). By death of insanity
   vii). Counter offer
   viii). By refusal
Revocation of Acceptance
An acceptance can be revoked any time before the acceptance comes to the knowledge of the proposer but not afterwards.
6. What do you mean by consideration?
Consideration is an essential element in a contract. Something which receives and gives by each party to an agreement is called consideration.

7. Types of consideration.
Consideration may be classified into three types, as follows:
i). Past consideration
ii). Present consideration
iii). Future consideration

8. What is good consideration?
The rules or necessary factors for consideration can be summed up as follows:
i). There must be desire of the promisor
ii). It must be real
iii). Reasonable
iv). Not illegal, immoral or opposed to public policy
v). Present past or future
vi). From the promisee of promisor

9. What are the Characteristics / Rules / Essential Factors of consideration?
The following rules may be laid down regarding consideration:
i). Desire (request)
ii). The consideration must be real
iii). Public duty
iv). Promise to a stranger
v). Consideration need not be adequate
vi). The consideration must not be illegal, immoral, or opposed to public policy
vii). The consideration may be present, past, or future
viii). Consideration may move from promisee or from any other person

10. In a formation of a contract consideration must be real but need not be adequate – Explain.
   - The consideration must have some value in the eye of law. It must not be sham or illusory.
   - The impossible acts and illusory or non-existing goods cannot support a contract. Therefore, real consideration comes from good consideration.
   - A contribution to charity is without consideration. Therefore, it is not real consideration.
   - An agreement to which the consent of the party is freely given is not void merely because the consideration is not 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.

11. “No consideration no contract”- exceptions to the rule Or, Can a contract be made without consideration?
Consideration is essential for validity of a contract. A promise without consideration cannot create a legal obligation. So consideration is essential for a contract. But there are exceptional cases where a contract is enforceable even though there is no consideration. They are as follows:
i). Natural love and affection
ii). Voluntary compensation
iii). Time bared debt
iv). Agency
v). Completed gift

12. Can silence be fraudulent?
i. Mere silence is not fraud
ii. Silence can be fraudulent in circumstances
iii. Silence is fraud where silence is in itself equivalent to speech
13. **Distinguish between void and voidable contract.**

<table>
<thead>
<tr>
<th>SL &amp; Points</th>
<th>Void contract</th>
<th>Voidable contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition.</td>
<td>An agreement not enforceable by law is said to be void.</td>
<td>An agreement which is enforceable by law at the opinion of one or more of the parties thereto, but not at all the opinion of the other or others is a voidable contract.</td>
</tr>
<tr>
<td>2. Right and obligation</td>
<td>A void agreement confers no right on any person and creates no obligations</td>
<td>But in case of voidable agreement the rights and obligations of the parties concerned are present unless it becomes void.</td>
</tr>
<tr>
<td>3. Declaration for voiding</td>
<td>As a void agreement is void from the beginning it is not necessary for the effected party to declare the agreement void.</td>
<td>But in case of voidable agreement the effected party needs to call the agreement void.</td>
</tr>
<tr>
<td>4. Refund the benefit</td>
<td>In case of void agreement the party is not bound to refund the benefit received to the other party.</td>
<td>But in case of voidable agreement the party may refund the benefit to the other party, if the agreement becomes void later on.</td>
</tr>
</tbody>
</table>

14. **Distinguish between a contingent contract and wagering agreement.**

The distinctions between contingent contract and wagering agreement are given below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Contingent contract</th>
<th>Wagering agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Validity</td>
<td>1. A Contingent contract is valid</td>
<td>1. A wagering agreement is void</td>
</tr>
<tr>
<td>2. Dependency</td>
<td>2. It depends on the happening or non-happening of an event, but the contract is valid</td>
<td>2. If is void.</td>
</tr>
<tr>
<td>3. Reciprocal promises</td>
<td>3. It may not contain reciprocal promises</td>
<td>3. It consists of certain reciprocal promises.</td>
</tr>
</tbody>
</table>

15. **What do you understand by supervening impossibility?**

When enter into contract it is good but subsequently impossible to perform. That condition is called supervening impossibility of contract.

16. **What do you understand by frustration of contract by supervening impossibility?**

When the common object of a contract can no longer be carried out, the court may declare the contract to be at an end. This is known as the doctrine of Frustration.

17. **What are the breaches due to supervening impossibility?**

18. **What do you understand by counter offer? Give an example.**

The acceptance shall be unconditional and absolute. If the acceptance is given with any condition changing any portion of the original offer then it is known as counter offer.

Example: A offer to B to buy his car for tk.100,000 but B agree to pay tk.90,000 the offer made by B is a counter offer.
19. **In which cases a contract can be void?**

OR. **When is an agreement said to be void?**

An agreement is said to be void because of mistake, lack of consideration, want of capacity etc. A list of void agreements is given below:

1. Lack of capacity.
3. Unlawful consideration or object.
4. Consideration or object partly unlawful.
5. Agreements without consideration.
6. Agreements in restraint of trade.
7. Agreements in restraint of legal proceedings.
8. Uncertain Agreement.
9. Agreements by way of wager.
10. Impossible acts.
11. Agreements contingent on impossible event.
12. Reciprocal promises where there are void promises.
13. Agreement is restraint of trade

20. **What are the differences between Indemnity and Guarantee?**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Contract of indemnity</th>
<th>Guarantee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Defiation</td>
<td>One party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.</td>
<td>A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in cage of his default.</td>
</tr>
<tr>
<td>2. Parties</td>
<td>1. Two parties</td>
<td>1. three parties</td>
</tr>
<tr>
<td>3. Number of contract</td>
<td>2. In a contract of indemnity it is necessary to have only one contract</td>
<td>2. In a contract of guarantee it is necessary to have three contracts.</td>
</tr>
<tr>
<td>4. Sue</td>
<td>5. In a contract of indemnity the indemnifier can sue only the indemnity holder for his loss</td>
<td>5. In a contract of guarantee the surety can proceed against principal debtor</td>
</tr>
</tbody>
</table>

21. **Distinguish between a contract and an agreement.**

<table>
<thead>
<tr>
<th>Objective</th>
<th>Contract</th>
<th>Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition.</td>
<td>An agreement enforceable by law is contract.</td>
<td>Promise or every set of promises forming the consideration for each other, is an agreement.</td>
</tr>
<tr>
<td>2. Similarity</td>
<td>All contracts are agreements</td>
<td>All agreements are not contact.</td>
</tr>
</tbody>
</table>

22. A offer a reward to whosoever shall return his lost briefcase. B returns the lost briefcase, not knowing of the advertisement reward. Is A bound to pay the reward to B?

No, A is not bound to pay reward to B. As per contract act an offer must be communicated to the offeree. If the offeree does any act of acceptance without knowing, it will not create any legal acceptance or agreement.
23. **What are the remedies for breach of contract ?**
   1. Rescission of the contract.
   2. Suit for damages.
   3. Suit upon Quantum Meruit
   5. Injunction.

24. **What are the rights of a bailor and bailee under the contract act?**

   **The rights of Bailor:**
   The rights of Bailor are enumerated hereunder:
   1. Enforcement of rights.
   2. Act inconsistent with the terms.
   3. Restoration of goods lent gratuitously.

   **The rights of Bailee:**
   The rights of Bailee are enumerated hereunder:
   1. Enforcement of rights.
   2. Bailment by several joint owners.
   3. Bailee not responsible on re-delivery to bailor without title.
   4. Bailee’s particular lien.
   5. Bailee’s general lien.

25. "**Ignorance of law is no excuse to avoid a contract" – Discuss.**

   We all are working and exercising our right and obligation under the law. These laws are unlikely to be known to all of us. So, The ignorance of law is not a valid reason to avoid contract. In this case, contract should be performed specifically.

26. **What is void or voidable agreement?**

   An agreement, which does not satisfy the essential elements of a contract, is void. An agreement not enforceable by law is said to be void. A void agreement has no legal effect. If confers no right on any person and creates no obligations

27. **What do you mean by consideration?**

   Consideration is an essential element in a contract. Something which receives and gives by each party to an agreement is called consideration.
   When, at the desire of the promissory, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

28. **Can a minor make a contract?**

   As per section 11 of contract act a minor is not competent to a contract. So he/she cannot make a contract. If any contract is made by the minor, it will be a void agreement.

29. **What do you mean by undue influence?**

   A contract is said to be induced by undue influence where –
   i. one of the parties is in position to dominate the will of the other
   ii. he uses the position to obtain an unfair advantage over the other
Other Important Questions

30. Short Notes
   ① Express Contract
   ② Implied Contract
   ③ Quasi Contract
   ④ Executed Contract
   ⑤ Executory Contract
   ⑥ Bilateral Contract
   ⑦ Unilateral Contract

31. Classification of Contract
   ① Valid contract
   ② Void contract
   ③ Voidable contract
   ④ Illegal contract
   ⑤ Unenforceable contract

32. Rules regarding an offer
   ① An offer may be express or may be implied from the circumstances
   ② An offer may be made to a definite person; to some definite class of persons; or to the world at large.
   ③ Legal relationship is required
   ④ The terms of the offer must be certain, definite, unambiguous and not vague.
   ⑤ A mere statement of intention is not an offer.
   ⑥ An offer must be communicated to the offeree
   ⑦ An offer may be conditional
   ⑧ Printed contracts

33. Who can accept an offer
   An offer can be accepted only by the person or persons for whom the offer is intended which includes the following:
   ① An offer made to a particular person can only be accepted by him because he is the only person to accept.
   ② An offer made to a class of persons can be accepted by any member of the class.
   ③ An offer made to the world at large can be accepted by any person whatsoever.

34. How an offer to be communicated?
   An offer may be communicated to the offeree or offerees by word of mouth, by writing or by conduct.

35. How an acceptance to be communicated?
   An acceptance to be communicated by the following:
   i). Offer and Acceptance by post
   ii). Offer and acceptance through telephone
   iii). Microphone

36. Is a promise to make a contribution to charity enforceable by law?
   No, a promise to make to charity is not enforceable because it is without consideration.

37. Can a person who is not a party to a contract sue it?
   A stranger to a contract, i.e., one who is not a party to it cannot file a suit to enforce it. A contract between P and Q cannot be enforced by R. But a stranger to the consideration can sue to enforce it provided he is a party to the contract. A contract between P, Q and R whereby P pays money to Q for delivering goods to R can be enforced by R although he did not pay any part of the consideration.
38. **Rules regarding acceptance of an offer.**

The acceptance of an offer to be legally effective must satisfy the following requirements:

i). It must be an absolute and unqualified acceptance of all the terms of the offer.

ii). Conditional acceptance / Counter offer.

iii). Contract subject to condition

iv). Clarification

v). The acceptance must be expressed in some usual or reasonable manner

vi). Mental acceptance or un-communicated assent does not result in a contract

vii). The mode of acceptance

viii). Time of acceptance

ix). When acceptance is complete

x). Before offer

xi). The acceptance must be made while the offer is in force.

39. **What are the exceptions to sue upon a person who is not a party/a stranger to a contract?**

There are certain exceptions to the rule that a stranger to the contract cannot sue upon it. They are as follows:

i). Beneficiaries in the case of trust

ii). Provision of marriage settlement of Minor

iii). Assignee of a contract

iv). Family settlement

v). Acknowledgement or Estoppel

40. **What are the rights and liabilities of a stranger?**

With the exception of the above cases, a contract cannot confer rights upon a person who is not a party to it. Also a contract cannot impose a liability upon a person who not a party to it.

41. **What are types of agreements said to be void?**

The following agreements are void from the beginning:

1. An agreement made by a minor

2. Agreements without consideration

3. Certain agreements against public policy

42. **What is void or voidable agreement?**

An agreement, which does not satisfy the essential elements of a contract, is void. An agreement not enforceable by law is said to be void. A void agreement has no legal effect. If confers no right on any person and creates no obligations

43. **What types of agreements become void?**

An agreement, which was legal and enforceable when it was entered into, may subsequently become void due to impossibility of performance, change of law or other reasons. When it becomes void the agreement ceases to have legal effect.

44. **What types of agreements are expressly declared void?**

There are certain agreements, which are expressly declared to be void are summarized hereunder:

1. Every agreement in restraint of marriage of any person, other than a minor, is void

2. every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void

3. Private individuals cannot by agreement alter or vary their personal law or the statute law

4. Agreements, the meaning of which is not certain, or capable of being made certain, are void

5. Agreement by way of wager are void

6. Agreements to do and act impossible in itself are void

7. Agreements whose objects or considerations are unlawful are void
45. What are the differences between void agreement and voidable agreement?

<table>
<thead>
<tr>
<th>Subject</th>
<th>Void agreement</th>
<th>Voidable agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition</td>
<td>An agreement not enforceable by law is said to be void. .</td>
<td>An agreement, which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.</td>
</tr>
<tr>
<td>2. Right/ Obligation</td>
<td>2. A void agreement confers no right on any person and creates no obligations</td>
<td>2. But in case of voidable agreement the rights and obligations of the parties concerned are present unless it becomes void</td>
</tr>
<tr>
<td>3. Necessity to call off</td>
<td>3. As a void agreement is void from the beginning it is not necessary for the effected party to declare the agreement void</td>
<td>3. But in case of voidable agreement the effected party needs to call the agreement void</td>
</tr>
</tbody>
</table>

46. What types of agreements are unenforceable by law?
An agreement which cannot be enforced in a court of law, one or both of the parties, because of some technical defect, e.g. want of registration or non-payment of the requisite stamp duty is unenforceable by law.

47. What is meant by illegal agreement?
An illegal agreement is one, which is against a law in force.

48. Distinct between void agreement and illegal agreement.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Void agreement</th>
<th>Illegal Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition</td>
<td>An agreement not enforceable by law is said to be void. .</td>
<td>An illegal agreement is one, which is against a law in force.</td>
</tr>
<tr>
<td>2. Nature</td>
<td>1. A void agreement is not necessarily illegal.</td>
<td>1. An illegal agreement is also void</td>
</tr>
</tbody>
</table>

49. What do you mean by capacity?
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.

50. Under which circumstances a person is incapable of entering into contracts?
A person is incapable of entering into contracts under the following circumstances:
1. if he is not attained the age of majority according to the law to which he is subject
2. if he is not of sound mind
3. if he is disqualified from contracting by and any law to which he is subject.
51. **Who is a minor?**
A minor is one who has not completed his or her 18th year of age.

52. **What are the exceptions regarding the rules to minor?**
To the minor's rule there are two exceptions which are given below:
1. When a guardian of the minor’s person or property is appointed by a court of law and
2. When a minor’s property is taken over by the Court of Wards for management.
In either case minority continues up to the completion of the 21st year.

53. **What do you mean by Sound Mind?**
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 of understanding it and forming a rational judgment as to its effect upon his interests.

54. **In which case an unsound mind may make a contact?**
A person who is usually of unsound mind, but occasionally of sound mind may make a contract when he is of sound mind.

55. **In which case a Sound Mind may not make a contact?**
A person who is unusually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

56. **What is the test of soundness of mind?**
The test of soundness of mind are given hereunder:
i). capacity to understand the business concerned
   ii). ability to form a rational judgment

57. **How may the unsoundness of mind arise?**
Unsoundness of mind arise from-
① insanity or lunacy
② idiocy
③ drunkenness
④ similar factors

58. **What do you mean by Idiocy?**
Idiocy is a congenital defect caused by lack of development of the brain. The term idiot is applied to a person whose mental powers are completely absent.

59. **What do you mean by Lunacy or Insanity?**
A lunatic is one whose mental powers are deranged so that he cannot form a rational judgment on any subject.

60. **What do you mean by Aliens?**
An alien means a citizen of foreign state. Contracts with alien are valid.

61. **What are the effects of agreements made by persons of unsound mind?**
The effects of agreements made by persons of unsound mind are describing hereunder:
i). Agreements made by a person of unsound mind are void
   ii). But agreements for supply of necessaries for unsound himself or for persons whom he is sound to support is valid as quasi contracts.

62. **What do you mean by Free Consent?**
Two or more persons are said to consent when they agree upon the same thing in the same sense.
63. In which situation consent is not free?
The consent is not free if it is caused by-
① Coercion
② Undue Influence
③ Fraud
④ Misrepresentation
⑤ Mistake

64. What do you mean by Coercion?
Coercion is the committing or threatening to commit, any act forbidden by penal Code, or 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.

65. What are the consequences of coercion?
The consequences of coercion are given below:
1. A contract brought about by coercion is voidable at the option of the party whose consent was so caused
2. The aggrieved party can have the contract set aside or he can refuse to perform it and take the defense of coercion if the other party sought to enforce it.
3. The aggrieved party may if he so desires abide by the contract and insist on its performance by the other party.

66. What are the features of coercion?
  i). Coercion means-
         ① committing or threatening to commit an act forbidden by the Penal Code.
         ② the unlawful detaining or threatening to detain any property.
  ii). The act constituting coercion, must be directed at any person and not necessarily at the other party to the agreement.
  iii). The act constituting coercion, must have been done or threatened with the intention of causing any person to enter into an agreement.

Exceptions:
  i). Prosecution
  ii). High prices and high interest rates.
  iii). A threat to commit suicide.

67. What are the special causes which does not constitute coercion?
The special causes which does not constitute coercion are listed below:
  i. Prosecution
  ii. High prices and high interest rates
  iii. A threat to commit suicide

68. What do you mean by undue influence?
A contract is said to be induced by undue influence where –
  iii. one of the parties is in position to dominate the will of the other
  iv. he uses the position to obtain an unfair advantage over the other.

69. What are the presumption to exist undue influence?
Undue influence may be presumed to exist in the following cases:
  i. Real or apparent authority or fiduciary relationship stands
  ii. Contract makes with a mentally incapable person.

70. What do you mean by unconscionable bargains?
Unconscionable bargain is one which is against the conscience of reasonable persons and what shocks the public. If exercise profit is made it will also be within this term.
71. **What do you mean fiduciary relationship?**

Fiduciary relationship means a relationship of mutual trust and confidence. Such a relationship is supposed to exist in the following cases:

- father and son
- guardian and ward
- solicitor and client
- doctor and patient
- preceptor and disciple
- trustee and beneficiary

72. **What are the consequences of undue influence?**

The consequences of undue influences are describing are describing hereunder:

1. It is voidable at the option of the party whose consent was so caused
2. Such an agreement may be set aside absolutely or
3. If the party who was entitled to avoid it has received any benefit thereunder, the court can set it aside upon such terms and conditions as may seem just
4. The aggrieved party may, if he desires, treat the agreement as binding and enforce it against the other party.

73. **How is an undue influence suspected?**

An undue influence is suspected in the following cases:

1. Inadequacy of consideration
2. Fiduciary relationship
3. Inequality between the parties as regard age, intelligence, social status etc.
4. Absence of independent advisors for the weaker party
5. Unconscionable bargains

74. **What are the difference between undue influence and coercion?**

<table>
<thead>
<tr>
<th>Undue influence</th>
<th>Coercion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The influence arises from the domination of the will of one person over another.</td>
<td>1. The influence arises from committing or threatening to commit punishable offence or detaining or threatening to detain property unlawfully.</td>
</tr>
<tr>
<td>2. Undue influence is mental pressure</td>
<td>2. Coercion are mostly cases of the use of physical force.</td>
</tr>
</tbody>
</table>

75. **What do you mean by misrepresentation?**

Misrepresentation arises when the representation made in inaccurate but the inaccuracy is not to any desire to defraud the other party. There is no intension to deceive.

76. **What are the causes of misrepresentation?**

The causes of misrepresentation are –

- i. Unwarranted assertion
- ii. Breach of duty
- iii. Innocent mistake

77. **What are the consequences of misrepresentation?**

The consequences of misrepresentation are –

- i). The aggrieved party can avoid the agreement
- ii). The aggrieved party can insist that the contract be performed and he shall be put in the position is which he would have been if the representation made had been true.
78. **What does "to deceive" mean?**

79. **What is fraud?**
The term fraud includes all acts committed by a person with a view to deceive another person. To deceive means to induce a man to believe a thing is true which is false.

80. **What type of acts to be considered as fraud?**

   i). False statement  
   ii). Active concealment  
   iii). Intentional non-performance  
   iv). Deception  
   v). Fraudulent act or omission

81. **What are the consequences of fraud?**
A party who has been induced to enter into an agreement by fraud has the following remedies open to him:

   1). Avoidance of performance of the contract  
   2). Insistence of performance of the contract  
   3). Sue for damage

82. **How can the relief for fraud be obtained?**
Relief for fraud can be obtained only if the following conditions are satisfied:

   1). Act committed by a party or agent  
   2). Act must have been done with the intention to deceive and must actually deceive.  
   3). Consent obtained by the act complained of  
   4). Silence  
   5). The remedy of rescinding not available

83. **What are the difference between fraud and representation?**

<table>
<thead>
<tr>
<th>Subject of Differences</th>
<th>Fraud</th>
<th>Misrepresentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Intension</td>
<td>1. Here implies an intention to deceive</td>
<td>1. No intension to deceive</td>
</tr>
<tr>
<td>2. Belief</td>
<td>2. Statement is dishonest.</td>
<td>2. Statement is honest though it is wrong.</td>
</tr>
<tr>
<td>3. Sue for damages</td>
<td>3. The aggrieved party can sue for damages</td>
<td>3. The aggrieved party can't sue for any damage.</td>
</tr>
</tbody>
</table>

84. **What is meant by the Uberrimae fidei contracts?**
Uberrimae fidei contracts are contracts where law imposes upon the parties the duty of making a full disclosure of all material facts.

85. **What type of contract come within the class of Uberrimae fidei contracts?**
The following types of contract come within the class of Uberrimae fidei:

   1). Contracts of Insurance  
   2). Fiduciary relationship  
   3). Contracts for the sale of immovable property  
   4). Allotment of shares of companies  
   5). Family settlement

85. **What do you mean by mistake?**
An erroneous belief concerning something is called mistake.

86. **How many classes of mistakes?**

1). Mistake of law  
   ⊗ mistake as to a law in force in Bangladesh.  
   ⊗ mistake as to a law not in force in Bangladesh.  
2). Mistake of fact
87. What is meant by bilateral mistake?
When both the parties of the contract mistake is called bilateral mistakes.

88. What is meant by unilateral mistake?
When one of the parties of the contract mistakes is called unilateral mistakes.

89. What are the rules regarding mistake?
1). Mistake of law
2). Mistake of fact
3). Opinion
4). Unilateral mistake

90. When are the consideration and the object of an agreement unlawful?
The consideration and the object of an agreement are unlawful in the following cases:
1. If it is forbidden by law.
2. If it is of such a nature that, if permitted, it would defeat the provision of any law.
3. If it is fraudulent.
4. If it involves or implies injury to the person or property of another.
5. If the court regards it as immoral.
6. If the court regards it as opposed to public policy.

91. Which are the agreements said to be against public policy?
The following agreements have been held to be against public policy:
1. Trading with enemy.
2. Agreements interfering with the course of justice.
3. Traffic in public offices.
4. Agreement creating an interest opposed to duty.
5. Agreement restraining personal freedom.
6. Agreements interfering with parental duties.
7. Agreements interfering with marital duties.

92. What do you mean by wager?
A wager is an agreement by which money is payable by one person to another on the happening or non happening of a future, uncertain event.

93. What are the characteristics of an wager agreement?
The characteristics of an wagering agreement are given below:
1. The consideration for the promise under a wagering agreement is to pay or get money.
2. The money is payable on the happening or the non-happening of an event.
3. The agreement depends on a future and uncertain event.
4. The essence of gaming and wagering is that one party is to win and the other lose.
5. In wagering agreement no party has control over the event.
6. Commercial transactions are valid, but to pay price differences in a wagering agreement is void.

94. Which are the transactions not wagers?
1. Shares.
2. Games of skill.
3. A statutory exception.
5. Badla.
95. What do you mean by contingent contract?
A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

96. What do you mean by collateral event?
A collateral event means an event which is neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise.

97. What are the characteristics of contingent contracts?
1. The performance of such contract depends on a contingency, i.e., on the happening or non happening of the future event.
2. The event must be collateral i.e., incidental to the contract.
3. The contingency is uncertain.

98. What are the methods of termination of a contract?
1. By performance of the promise or tender.
2. By mutual consent canceling the agreement or substitute in a new agreement in place of the old.
4. By lapse of time.
5. By material alteration without the consent of the other parties.
6. By breach made by other parties.

99. How may the termination of contract by mutual agreement occur?
1. Novation: Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between the different parties.
2. Alteration: Alteration of a contract means change in one or more of the terms of a contract.
3. Remission: Remission may be defined as the acceptance of less than what was contracted for.
4. Rescission: Any person interested in a contract in writing may sue have it rescinded.
5. Waiver: It means the abandonment of a right. A party to a contract may waive his rights under the contract. Thereupon the other party is released from his obligation.
6. Merger: When a superior right and inferior right coincide and meet in one and the same person, the inferior right vanishes into the superior right. This is known as merger.

100. What do you mean by accord and satisfaction?
Accord means the promise to accept less than what is due under the old contract. Satisfaction means the payment or the fulfillment of the smaller obligation.

101. What are the grounds of frustration?
Supervening impossibility may occur in many ways, some of which are explained below:
1. Destruction of an object.
2. Change of law.
3. Failure of precondition.
4. Death or incapacity of personal services.
5. Outbreak of war.

102. What are the types of supervening impossibility?
There are types of supervening impossibility:
1. Post-contractual impossibility
2. Pre-contractual impossibility
103. What are the exceptions of the principle of supervening impossibility?
Some points are given below of cases which do not come within the principle of supervening impossibility:
1. Difficulty of performances.
2. Commercial impossibility.
3. Strikes, lock-outs, civil disturbances and riots.
4. Failure of one of the objects.

104. What are the effects of supervening impossibility?
When the performance of contract becomes subsequently impossible or illegal, the contract becomes void.

105. What is the doctrine of frustration?
When the common object of a contract can no longer be carried out, the court may declare the contract to at an end. This is known as Doctrine of Frustration.

106. When does a contract terminate by law?
A contract terminates by operation of law in case of the following cases:
1. By death
2. By insolvency
3. By merger

107. How may the breach of contract arise?
Breach of contract may arise in two ways:
1. by anticipatory breach.
2. by actual breach / present breach

108. What are the remedies for breach of contract?
1. Rescission of the contract.
2. Suit for damages.
3. Suit upon Quantum Meruit
5. Injunction.

109. What are the types of damages?
1. Compensatory damages.
2. Special damages.
3. Nominal/ Contemptuous damages.
4. Exemplary, Punitive or Vindictive damages.

110. What do you mean by quantum meruit?
Quantum Meruit means as much is merited. A person can, under certain circumstances, claim payment for work done or goods supplied without any contract and in cases where the original contract has terminated by breach of contract by one party or has become void for some reason. This is known as Doctrine of Quantum Meruit.

111. What do you mean by Quasi Contract?
When one person obtains a benefit at the expense of another and the circumstances are such that he ought, equitably, to pay for it, the law will compel payment even though there is no contract between the parties by which payment is promised. The parties will be put in the same position as they would have occupied if there was a contract between them. Such cases are called Quasi Contract.
112. What are the rules regarding the doctrine of quantum meruit?
The rules regarding the doctrine of quantum merit are stated below:
1. The injured party entitlement to claim reasonable compensation
2. A person who has done something under the contract which is discovered to be unenforceable by law for some technical reasons, is entitled to get compensation.
3. Presumption of law regarding an implied agreement to pay for services rendered.
4. Where a contract is not divisible into parts and lump sum of money is promised to be paid for the entire work, part performance does not entitle a party to claim payment quantum meruit.
5. Nothing can be recovered for quantum meruit when there is no evidence of an excess or implied promise to pay for work already done.
6. A person guilty of breach (violate) of contract cannot claim payment on quantum meruit.

113. Describe the cases which are to be deemed to be Quasi Contract.
The cases which are to be deemed to be Quasi Contract are describing below:
1. Necessaries for incapable person.
2. Reimbursement of interested person.
4. Finder of goods.
5. Delivery by mistake or under coercion.

114. What do you mean by contract of indemnity?
A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

115. What are the characteristics of contracts of indemnity?
The characteristics of contracts of indemnity are given hereunder:
1. A contract of guarantee must satisfy all the essential elements of a contract.
2. The contract may be expressed or implied.

116. What are the rights of the indemnity holder?
1. All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
2. All costs which he may be compelled to pay in such suits.
3. All sums which he may have paid upon compromise of such suit.

117. What do you mean by contracts of guarantee?
A contract to perform the promise or discharge the liability, of a third person in case of his default.

118. How many types of contracts of guarantee?
1. For payment to the creditor to the principal debtor by the guarantor.
2. Payment of price for goods sold.
3. Fidelity guarantee.

119. What are the essentials of valid guarantee?
1. Must satisfy all the essential elements of a contract.
2. May be oral or written.
3. There must be three parties.
4. The primary liability is that of principal debtor.
5. Minor
6. Consideration
120. Which are the invalid contracts of guarantee?
1. Misrepresentation.
2. Concealment.
3. When co-surety does not join.
4. Lack of essential elements.

121. What do you mean by Continuing Guarantee:
A guarantee which extends to a series of transaction is called continuing guarantee.

122. How is a continuing guarantee revoked?
1. By notice of revocation by the surety.
2. By the death of the surety.

123. What do you mean by Bailment?
A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished be returned or otherwise disposed of according to the direction of the person delivering them.

124. Who are bailor, bailee?
Bailor: The person delivering the goods is called the bailor.
Bailee: The person to whom they are delivered is called the bailee.
Bailment: The transaction is called Bailment.

125. What are the characteristics of Bailment?
The characteristics of Bailment are given below:
1. Delivery.
2. Purpose
3. Return.
5. Movable goods.
6. Possession.

126. What are the kinds of Bailment?
1. Gratuitous Bailment: A gratuitous bailment is one in which neither the bailor, nor the bailee is entitled to an remuneration
2. Bailment for reward: A bailment for reward is one where either the bailer or the bailee is entitled to a remuneration

127. What are the duties of the Bailee?
The duties of the Bailee are given below:
1. Duty of reasonable care.
2. Bailee’s liability for negligence of servants.
3. Unauthorized use of goods.
4. Mixture of Bailor’s goods with the Bailee’s.
5. Duty of returning goods.
6. Accretion to the goods bailed.
7. Liabilities of Innkeeper and Hotelkeepers.
8. Liabilities of carrier.
128. **What are the duties of the Bailor?**
The duties of the Bailor are given below:
1. Bailor’s duty to disclose faults in goods bailed.
2. Payment of expenses in Gratuitous Bailment.

129. **What are the rights and duties of finder of goods?**
1. Possession.
2. Compensation and Lien.
3. Reward.
4. Sale.

130. **What are the rights of Bailor?**
The rights of Bailor are enumerated hereunder:
1. Enforcement of rights.
2. Act inconsistent with the terms.
3. Restoration of goods lent gratuitously.

131. **What are the rights of Bailee?**
The rights of Bailee are enumerated hereunder:
1. Enforcement of rights.
2. Bailment by several joint owners.
3. Bailee not responsible on re-delivery to bailor without title.
4. Bailee’s particular lien.
5. Bailee’s general lien.

132. **When does a Bailment terminate?**
1. Efflux of time.
2. Fulfillment of purpose.
3. Act inconsistent with the term.
5. Death.

133. **What are the duties and obligations of finder of goods?**
1. He must take reasonable care of the goods.
2. He must not mix the finder’s goods with his own goods.
3. The goods must be returned to the real owner.
4. If there is an accretion to the goods found, it must be given to the real owner.
5. He must not use the goods for his purpose.
6. He must try to find out the true owner of the goods.

134. **What do you mean by Pledge or Pawn?**
The bailment of goods as security of payment of a debt or performance of a promise is called Pledge or Pawn.

135. **What are the difference between Bailment and Pledge?**
The difference between pledge and other kind of bailment lies in the purpose or objectives of the transaction.
1. The purpose of a pledge is to provide security for a debtor or the performance of a promise.
   But in case of bailment there are other purposes for example- repair, safe custody.
2. Pledge is a particular kind of bailment.
136. When can a non-owner make a valid Pledge?
1. Mercantile Agent.
2. Possession under a voidable contract.
3. Pawnor with a limited interest.
4. Possession with co-owner.

137. What are the rights of the Pledge or Pawnee?
1. Right of Retainer.
2. Retainer of subsequent advance.
3. Extraordinary expenses.
4. Pawnee’s right where pawnor makes default.

138. What are the rights of Pledgor?
1. Defaulting pawnor’s right to redeem.
2. Preservation and maintenance.
3. Protection of debtor

139. What do you mean by Agent, Principal and Agency?
Agent: An agent is a person employed to do any act for another or to represent another in dealings with third person.
Principal: The person for whom such act is done or who is so represented, is called the principal.
Agency: The relationship is called Agency.

140. What are the differences between agent and servant?
The differences between agent and servant are given below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Agent</th>
<th>Servant</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Authority</td>
<td>1. An agent is to exercise his authority in accordance with the principal’s instructions</td>
<td>1. A servant has to act according to the orders of the master in every particular</td>
</tr>
<tr>
<td>2. Relationship</td>
<td>2. An agent is appointed and employed to bring the principal into contractual relationship with third parties</td>
<td>2. A servant cannot do that</td>
</tr>
<tr>
<td>3. Binding</td>
<td>3. An agent can bind the principal to the third parties</td>
<td>3. A servant cannot do so</td>
</tr>
<tr>
<td>4. Remuneration</td>
<td>4. The mode of remuneration of an agent may vary, including a commission on the basis of the work done</td>
<td>4. A servant is generally paid through wages</td>
</tr>
<tr>
<td>5. Liability</td>
<td>5. An agent is liable for wrong done within the scope of his authority</td>
<td>5. A master is liable for the wrong of his servant if it is committed in course of the servant’s employment</td>
</tr>
<tr>
<td>6. Number of principal</td>
<td>6. An agent may work for several principals</td>
<td>6. A whole-time servant serves only one master</td>
</tr>
</tbody>
</table>
141. What are the differences between Agent and Bailee?

<table>
<thead>
<tr>
<th>Subject</th>
<th>Bailee</th>
<th>Agent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Possession</td>
<td>1. The bailee has possession of goods of the bailor</td>
<td>1. An agent may not have possession of any goods or property of the principal</td>
</tr>
<tr>
<td>2. Relationship</td>
<td>2. The bailee has no power to create any contractual relationship with the third party</td>
<td>2. An agent has that authority.</td>
</tr>
<tr>
<td>3. Act on behalf</td>
<td>3. Under certain circumstances a bailee may act as an agent</td>
<td>3. An agent can't.</td>
</tr>
</tbody>
</table>

142. What are the different classes of Agents?
1. Broker.
2. Factor.
3. A Commission Agent.
4. Auctioneer.
5. A Del credere Agent.
6. General Agent and Particular Agent.

143. What are the methods of creating Agency?
1. Agency by Express Agreement.
2. Agency by Implied Agreement.
3. Agency by Estoppel or by Holding Out.
5. Agency by Ratification.

145. Is a wife an agent of her husband? Or, Can a wife bind her husband?
A wife is an agent of necessity, having power to pledge her husband's credit for necessaries of life, when she is not properly provided for him or when she has been deserted by the husband. But if the husband gives her a sufficient allowance, she has no authority to pledge his credit and can never be the agent of necessity.

146. What happens when the agent exceeds his authority?
1. When the authority is separable.
2. When authority can not be separated.
3. When the principal is bound by unauthorized acts of agent-
   ⊙ Where by the rule of estoppel the principal is precluded from denying the authority of the agent.
   ⊙ Where an agency has been terminated, but notice of termination has not been received by the other parties concerned.

147. What do you mean by Sub-agent?
An agent appointed by an agent is called a sub-agent. A sub-agent is a person employed by, and acting under the control of, the original agent in the business of agency.
148. **What are the exceptions regarding the appointment of an agent by an agent?**
1. When it is permitted by the custom, of the trade with which the agency is concerned.
2. When it is necessary because of the nature of the agency.

149. **What do you mean by co-agent?**
A co-agent is a person appointed by the agent according to the express or implied authority of the principal, to act on behalf of the principal in the business of the agency.

150. **How does an agency terminate?**
1. Termination by act of parties.
2. Termination by operation of law.
   ① Efflux of time.
   ② Performance of the object.
   ③ Determination of subject-matter.
   ④ Death or insanity of the principal or agent.
   ⑤ Insolvency of the principal.
   ⑥ The principal becoming an alien enemy.
   ⑦ Termination of the sub-agents authority.

151. **What are the duties of agents to the Principals?**
1. Agents duty in conducting principals business.
2. Skill and diligence required from agent.
3. Agent’s duty to render accounts.
4. Agent’s duty to communicate to principal.
5. Agent’s not to deal on his own account.
6. Principal to get benefit of agents dealings.
7. Agents duty to pay sums received for principal.
8. Principal’s death or insanity.

152. **What are the duties of principals to agents?**
1. Agent to be indemnified against consequences of lawful acts.
2. Agent to be indemnified against consequences of acts done in good faith.

153. **What are the rights of principals?**
1. Compensation
2. Agent's duties
3. Revocation

154. **What are the rights of agents?**
1. Enforcement of rights.
2. Agent’s right of retainer.
3. When agents remuneration becomes due.
4. Agent not entitled to remuneration for business misconduct.
5. Agents lien.
155. What are the personal responsibility of agent?

In case of
1. Foreign principal.
2. Undisclosed principal.
3. When principal cannot be sued.
4. Fictitious person or non-existent person.
5. Unauthorized acts.
6. Misrepresentation or unauthorized act by agent.
7. Pretended agent.
8. Representation as to liability.

156. What are the legal consequences of the contracts with an undisclosed principal?

Legal consequences are as follows-
1. Principal may require performance of the contract.
2. Other party may refuse to fulfill the contract.
3. Performance is subject to the rights and obligations between agent and the other party.
4. Agent is personally liable.
Sale of Goods Act-1930

ICAB Questions and Answers

1. When does an agreement to sell become sale?
An agreement to becomes a sale when the prescribed time elapses or the conditions, Subject to which the title / Property in the goods is to be transferred, are fulfilled.

2. What are the features of a contract of sale of goods?
The essential elements of a contract for the sale of goods are given hereunder:
1. Movable Goods.
3. Two parties.
5. Method of forming the contract.
6. The terms of contract.
7. Other essential elements.

3. What are the differences between Condition and Warranty?
The differences between condition and warranty are sited bellow:

<table>
<thead>
<tr>
<th>SL No&amp; Subject</th>
<th>Condition</th>
<th>Warranty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition</td>
<td>A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated</td>
<td>A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.</td>
</tr>
<tr>
<td>2. Terms</td>
<td>Condition is a term which is essential to the main purpose of the contract.</td>
<td>Warranty is only a collateral term.</td>
</tr>
<tr>
<td>3. Conversion</td>
<td>A breach of condition may under certain circumstances, be treated as warranty.</td>
<td>But a warranty cannot become a condition.</td>
</tr>
</tbody>
</table>

4. Give an example of implied condition in a contract of sale of goods.
There is an implied condition on the part of the seller that, in the case of sale, he has a right to sell the goods and that in the case of agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

Example: A bought a motorcar from B and used it for four months. B had no title on that car. A was forced to return the car to the true owner. Held, there is a breach of the implied condition as to title and A is entitled to get back the purchase money paid notwithstanding the fact that he had used the car for four months.
5. What is doctrine of Caveat Emptor?
Caveat Emptor is a Latin expression which means “buyers beware”. The doctrine of caveat emptor means that, ordinarily, a buyer must buy goods after satisfying himself of their quality and fitness. If he makes a bad choice he cannot blame the seller or recover damages from him.

6. What are the rules, which determine when ownership of property passes from the seller to the buyer?
Or, When does title in the property in goods sold pass from the seller to the buyer?
1). Unascertained Goods.
2). The intention of the Parties.
3). Specific goods.
4). When seller has something to do.
5). When goods are to be measured, tested, etc.
6). Unconditional appropriation.
7). Delivery to the carrier.
8). Goods sent on approval or “on sale or return”.

7. What are the prevailing rules regarding delivery?
1). Possession of Buyer.
2). Effect of part delivery.
3). Application for delivery.
4). Place of delivery.
5). Time of delivery.
6). Possession of a third person.
7). Expenses of delivery.
8). Delivery of the wrong quantity.
9). Installment delivery.
10). Delivery to the Carrier or Wharfinger.
11). Examining the goods.
13). Buyer is not bound to return rejected goods.
14). Liability of Buyer.

8. “No seller can give the buyer better title to the goods then he, himself has” – Explain.
Seller is the true owner of the goods. But he cannot give better title/ property in the goods then he, himself has. There is a Latin phrase in this concept 'Nemo dat qui non habet', which represents, none can give, who does not himself possess. This rule is applicable for movable and immovable goods excepting some conditions.
Example: A horse was sold in a public auction. But the horse was a thievery item and was without the knowledge of both the buyer and the auction-taker. It was held that the real owner of the horse could recover his horse.

9. Who is an unpaid seller?
The seller of goods is deemed to be an unpaid seller:
☐ when the whole of the price has not been paid to tendered.
☐ when a bill of exchange or other negotiable instruments has been received and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.
10. Define buyer, seller, and goods.
1. Buyer: Buyer, means a person who buys or agrees to buy goods.
2. Seller: Seller, means a person who sells or agrees to sell goods.
3. Goods: Goods, means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agree to be severed before sale or under the contract of sale.
   i.e. ‘Goods’ includes every kind of movable property except (i) actionable claims and (ii) money.

11. What are the rights of seller of goods?
Or, Discuss the rights of the seller against the buyer.
1). Remedies.
2). Enforcement of liabilities of buyer.
3). Other rights
   □ Damages for non-delivery.
   □ Remedy for breach of warranty.
   □ Repudiation of contract.
   □ Interest and special damages.

12. What are the rights of buyer of goods?
1). Delivery.
2). Repudiation.
3). Buyer’s right of examining goods.
4). Buyer is not bound to return rejected goods.
5). Damages for non-delivery.
6). Specific performance.
7). Remedy for breach of warranty.
8). Repudiation of Contract.
9). Effect of tax changes.

13. What are the rights of the unpaid seller?
A. Against the goods:
   1). Seller’s lien or Vendor’s lien.
   2). The right of stoppage in transit.
   3). The right of resale.
B. Against the buyer personally:
   1). Suit for the price.
   2). Suit for damages.
   3). Claim for interest and special damages.

14. What is the meaning of vendor’s lien?
Unpaid seller has right to lien on goods while he is in possession of them, in the following cases:
   i). when the goods have not sold in credit,
   ii). when the goods sold in credit but credit period has expired,
   iii). the buyer has become insolvent.
   • Seller has right to lien if the possession of goods kept by him as an agent or bailee of buyer.
   • Seller has right to lien on the remainder goods after pare delivery.
15. What are the consequences of breach of contract of sale?

A. Seller’s Remedies Against the Goods.
1). Seller’s lien or Vendor’s lien.
2). The right of stoppage in transit.
3). The right of resale.

B. Remedies of the Seller Against Buyer Personally.
1). Suit for the price.
2). Suit for damages.
3). Claim for interest and special damages.

C. Buyer’s Remedies Against the Seller.
1). Damages for non-delivery.
2). Specific performance.
3). Remedy for breach of warranty.
4). Repudiation of contract.

Other Important Questions and Answers

16. Short notes:
1. Existing goods: Existing goods are goods which are already in existence and which are presented in some person’s possession and ownership.
2. Future goods: Future goods mean goods to be manufactured or produced by the seller after the making of the contract of sale.
3. Contingent goods: There may be a contract for the sale of goods for the acquisition of which by the seller depends upon a contingency which may or may not be happen.
4. Price: Price, means the money consideration for a sale of goods.
5. Property: Property, means the general property in goods and not merely a special property.
6. Delivery: Delivery, means voluntary transfer of possession from one person to another.
7. Deliverable State: Goods, are said to be in a deliverable state, when they are in such state that the buyer would under the contract be bound to take delivery of them.
8. Specific / Ascertained Goods: Specific / Ascertained goods identified and agreed upon at the time when a contract of state is made.
9. Generic / Unascertained Goods: Generic / Unascertained goods are not identified and agreed upon at the time when a contract of state is made.
10. Sale and Agreement to Sell: Where the transfer of the property in the goods is taken place at a future time or subject to some condition thereafter to be fulfilled, the contract is called agreement to sell.

17. What are the essential elements of Contract for the Sale of Goods?
   i) Movable goods
   ii) Movable goods for money
   iii) Two parties
   iv) Formation of the contract of sale
   v) The terms of contract
   vi) Other essential elements:
18. What are the differences between sale and agreement to sale?

<table>
<thead>
<tr>
<th>Sl.&amp; Subject</th>
<th>Sale</th>
<th>Agreement to sale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Definition</strong></td>
<td>Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale</td>
<td>Where the transfer of the property in the goods is taken place at a future time or subject to some condition thereafter to be fulfilled, the contract is called agreement to sell.</td>
</tr>
<tr>
<td><strong>2. Transfer of ownership</strong></td>
<td>The property in the goods passes to the buyer.</td>
<td>The property remains with the seller until the agreement to sell becomes a sale.</td>
</tr>
<tr>
<td><strong>3. Nature of contract</strong></td>
<td>Sale is an ‘executed contract’</td>
<td>The agreement to sell is an ‘executable contract’.</td>
</tr>
</tbody>
</table>

19. What is meant by Hire Purchase Agreement?
A hire-purchase agreement is one under which a person takes delivery of goods promising to pay the price by a certain number of installments and until full payment is made, to pay higher charges for using the goods.

20. What do you mean by Condition?
A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated (rejected). - Sec. 12 (2)

Example: A buyer placed an order to the seller of furniture stating that, the furniture would be made of tick-wood, otherwise he would not take it. In this case, furniture made of tick-wood is a condition.

21. When can a condition be treated as a Warranty?
1). Voluntary waiver of a condition.
2). Compulsory waiver of a condition.

22. What do you mean by warranty?
A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. - Sec. 12 (3)

Example: A buyer placed an order to the seller of furniture stating that, the furniture would be made of good quality wood, and the seller agreed to make it with tick-wood. If the furniture would not make of tick-wood, it would be treated as the breach of warranty not any condition.

23. What are the consequences for breach of Warranty?
1). Suit for damages:
A breach of warranty gives rise to claim for damages but not to a right to reject the goods and treat the contract as repudiated.

2). Adjustment for damages:
A breach of warranty by the seller may rise to claim to the buyer for compensation or making adjustment from the selling price of the goods.
24. What are the consequences for breach of Condition?

1). Repudiation or revocation of goods:
A buyer, upon the breach of condition if it done by the seller, may reject the goods. On the other hand a seller, upon the breach of condition if the buyer does it, may repudiate the contract.

2). Repudiation of contract:
Where either parties to a contract of sale repudiates the contract before the date of delivery, the other party may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

3). Claim for damages:
In the case of any breach of contract, the victim is moreover entitled to claim for damages after repudiation of goods and contract.

25. What are the consequences of Implied Conditions?

1). Condition as to title.
2). Sale by description.
3). Sale by sample.
4). Sale by sample as well as description.
5). Condition as to fitness or quality.

26. What are the exceptions to the rule of Caveat Emptor?

1). Where the buyer relies upon the skill and judgment of the seller.
2). Where by custom an implied condition of fitness is annexed to a contract of sale.
3). Where there is a sale of goods by description there is an implied condition that the goods are fit for sale.
4). Where the seller is guilty of fraud.

27. What are the Implied Warranties?

1). The buyer must get quiet possession.
2). The goods must be free from encumbrance.
3). Fitness of goods, required for a purpose, may be warranted by usage of trade.

28. Why is the time of transfer of ownership necessary?

1). Risk passes with property.
2). Who can take action?
3). What is the effect of insolvency?

29. Under what circumstances a person who is not owner, can give to the transferee a valid title to the goods?

1). Estoppel.
2). Sale by a mercantile agent.
3). Sale by one of several joint owners.
4). Sale of goods obtained under a voidable agreement.
5). Sale by the seller in possession of goods after sale.
6). Buyer in possession of goods over which the seller has some right.
7). An unpaid seller.
30. **What are the duties of seller of goods?**
The following are the duties of seller of goods:
1. Delivery
2. Risk of deterioration of goods
3. Damages for non-delivery
4. Specific performance.

31. **What are the duties of buyer of goods?**
The buyer of goods has the following duties:
1. Payment of price
2. Compensation
3. Delivery
4. Liability of buyer
5. Interest and special damages.
Partnership Act 1932.

**ICAB Question and Answer**

1. **Can a partner bind the firm?**
   A partner can bind the firm by the means of his acts relating to partnership business. Persons carrying on business in partnership are agents as well as principals. The business of a firm is carried on by all or any one or more of them acting for all. Every partner has the authority to act on behalf of all and can, by his actions, bind all the partners of the firm.

2. **What are the essential elements of a Partnership?**
   The following **three elements** are the essential of a partnership
   1. **Contractual relation / Voluntary agreement:**
      There must be an agreement entered into by two or more (20, but in case of Banking 10) persons.
   2. **Sharing profit/ loss:**
      The agreement must be to share the profits of a business.
   3. **Carrying of business:**
      The business must be carried on by all or any of the partners acting for all.

3. **Can a firm be liable for the wrongful acts of a partner?**
   A firm can be liable for the wrongful acts of a partner. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore is liable to the same extent as the partner.

4. **What do you understand by partnership at will?**
   A partnership is called a partnership-at-will;
   a. when the partnership is not for a fixed period of time, and
   b. when no provision is made as to when and how the partnership will come to an end.
   A partnership at will can be dissolved whenever any partner chooses to do so.

5. **What do you mean by Registration of Firms?**
   Registration of firm means the registration of the contract with the registrar. It is not compulsory but an unregistered firm suffers from certain disabilities and therefore registration is necessary for carrying on business.

6. **Is it mandatory for a firm to registration?**
   The registration of a partnership firms is not mandatory. Therefore an unregistered firm is not an illegal association. But an unregistered firm suffers from certain disabilities and therefore registration is necessary form carrying on business.
7. Can you spell out the procedure for registration of a firm?
   a. If any firm wants to be registered then it shall have to made application to the registrar
      Under prescribed form & fee mentioning the following subjects / information:
      i. Name of the firm
         ii. The principal office
         iii. The branch office (if any)
         iv. Objectives
         v. Date of joining of each partner
         vi. Date of constitutions
         vii. Name and full address of the partners
         viii. Duration of the firm
   b. The above application must be signed & verified by all partners or their agent specially authorized
      on this behalf.
   c. If registrar satisfies with the application he record an entry of the statement in the Register of Firm
      and the firm is thereupon considered to be registered.

8. What are the effects or consequences of Non-registration of a firm?
   An un-registered firm and the partners thereof suffer from certain disabilities:
   1. A partner of an unregistered firm cannot file a suit (against the firm or any partner thereof) for the purpose of enforcing a right arising from contract or a right conferred
      by the Partnership Act.
   2. No suit can be filed on behalf of an unregistered firm against any third party for the
      purpose of enforcing a right arising from a contract.
   3. An un-registered firm cannot claim a set-off in a suit.
   4. Cannot claim to the court for the receivable amount exceeding Tk.100 from the third party.

   Exceptions:
   1. A partner of an unregistered firm can file a suit for the dissolution of the firm and for
      accounts.
   2. Suits can be filed for the realization of the properties of a dissolved firm even though it
      was registered.
   3. The Official Assignee or Receiver can realize the properties of an insolvent partner of an
      unregistered firm.
   4. There is no bar to suits by unregistered firms and by the partners thereof in areas where the
      provision relating to the registration of firms do not apply by notification of State
      Government under Section 56.
   5. Partners have right to claim for his portion of share from access the assets of dissolved
      firm.
   6. An unregistered firm can file a suit (or claim a set off) for a sum of not exceeding Tk. 100.

9. Can a minor be admitted as a Partner?
   A minor cannot enter into a contract of partnership because an agreement by a minor is void. But if
   all partners agree, a minor may be admitted to the benefits of an existing firm.
10. In what situations compulsory dissolution may take place?
Dissolution of a partnership firm is compulsory in case of following cases:
   a. by the adjudication of all the partners or of all the partners but one as insolvent, or
   b. by the happening of any event which makes the business of the firm unlawful.

11. What are the grounds of dissolution?
A firm may be dissolved on any of the following grounds:

2. By agreement: A firm may be dissolved any time with the consent of all the partners of the firm. Partnership is created by contract; it can also be terminated by contract.

3. Compulsory dissolution: A firm is dissolved—
   a. by the adjudication of all the partners or of all the partners but one as insolvent, or
   b. by the happening of any event which makes the business of the firm unlawful.

4. On the Happening of Certain Contingencies:
Subject to contract between the partners, a firm is dissolved—
   a. if constituted for a fixed term, by the expiry of that term;
   b. if constitute to carry out one or more adventures or undertakings, by the completion thereof;
   c. by the death of a partner; and
   d. by the adjudication of a partner as an insolvent.

5. By Notice : Where the partnership is at will, the firm may be dissolved by any partner giving notice in written to all other partners of his intention to dissolve the firm.

6. Dissolution by the Court:
At the suit of a partner the court may dissolved a firm on any one of the following grounds:
   a. Insanity: If a partner has become of unsound mind. The suit for dissolution in this case can be filed by the next friend of the insane partner or by other partner.
   b. Permanent Incapacity: If a partner becomes permanently incapable of performing his duties as a partner. The suit for this case must be brought by a partner other than the person who has become incapable.
   c. Guilty Conduct: If a partner is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business.
   d. Persistent Breach of Agreement: If a partner willfully and persistently commits breach of the partnership agreement regarding management, or otherwise conducts himself in such a way that it is not reasonably practicable for the other partners to carry on business in partnership with him.
   e. Transfer of Whole interest: If a partner has transferred the whole of his interest in the firm to an outsider or has allowed his interest to be sold in execution of a decree.
   f. Loss: If the Business of the firm cannot be carried on except at a loss.

Just and Equitable Clause: If the court considers it just and equitable to dissolve the firm.
12. **Happening of certain contingencies may lead to dissolution of partnership what are those?**
Subject to contract between the partners, a firm is dissolved on the happening the following of certain contingencies
- a. if constituted for a fixed term, by the expiry of that term;
- b. if constitute to carry out one or more adventures or undertakings, by the completion thereof;
- c. by the death of a partner; and
- d. by the adjudication of a partner as an insolvent.

13. **Can an outgoing partner carry guarantee?**
A continuing guarantee given to a firm or to a third party in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

14. **What are the ten Important elements of a stand and partnership deed? (P – 208)**
The important elements of a stand and partnership deed are as follows:
1. Name and address of the partners
2. Firm name
3. Nature of business
4. Place of business and business address
5. Duration of the partnership and mode of dissolution
6. The amount of capital to be contributed by each partner
7. The mode of management
8. The powers of the partners
9. Terms on which a partner can retire
10. Expulsion of partners
11. Introduction of new partners

**Other Important Questions**

15. **What do you mean by Partnership?**
Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

16. **What are the types of partnership forbidden by law?**
   a. Number of partners.
   b. An agreement to form a partnership, for the purpose of carrying on an illegal trade.

17. **What do you mean by Firm, Firm-name, Partner?**
Persons who have entered into partnership with one another are called individually “partners” and collectively “a firm” and the name under which their business is carried on is called the “firm name”
18. What is the legal status of a Firm?

19. Who can be a partner?
Under the Partnership Act, a person may be partner if he has the capacity to enter into a contract. From the purposes of the Partnership Act, the term ‘person’ does not include a partnership or a limited company. Thus a company P cannot form a partnership with a company Q. Similarly, a firm X cannot form a partnership with firm Y. But all the partners of firm X and all the partners of firm Y can form a single partnership, subject to the rules regarding the number of partners. However, it is assumed that except the followings all are eligible to become a partner of a firm:

a. Minor: A minor cannot be a partner. But in an existing partnership, a minor can be admitted into a firm if all the partners of the firm agree. Such minor gets all the benefits of the partnership.

b. Person of unsound mind: A person who is of unsound mind cannot become a partner.

c. Insolvent: A person, who is adjudged insolvent by the court, cannot become a partner.

d. Company: In a Company the capacity to enter into contract is determined by the Memorandum and Articles of the Association of the Company. The liability of the members of a firm under the Partnership Act, for the debts of the firm, is unlimited. But a company cannot incur unlimited liability. Therefore a company cannot become a partner of a firm.

e. An alien enemy: An alien enemy cannot enter into a contract of partnership with a citizen of the country.

f. Ambassador: Any foreign ambassador in Bangladesh cannot enter into a partnership in the country.

20. What are the difference between Partnership and Co-ownership?
Difference between partner and co-ownership are sited below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Partnership</th>
<th>Co-ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition</td>
<td>Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.</td>
<td>Co-ownership means joint ownership</td>
</tr>
<tr>
<td>2. Agent</td>
<td>In a partnership each partner is the agent of the others.</td>
<td>But a co-owner is not the agent of the other owners.</td>
</tr>
<tr>
<td>3. Agreement</td>
<td>Partnership always arises out of agreement.</td>
<td>Co-ownership may arise by agreement or by operation of law.</td>
</tr>
<tr>
<td>5. Sharing of profit</td>
<td>In a partnership there must be sharing of profit.</td>
<td>Since a co-ownership may exist without a business, the question of sharing profits or loss is immaterial in a co-ownership.</td>
</tr>
</tbody>
</table>
21. What are the classes of Partners?
   a. **Active partner:** An active partner is one who actually participates in the business of the firm. A person becomes a partner only by agreement.
   b. **Doormat, Sleeping or Nominal partner:** These partners join the firm by agreement but do not take any active part in the business. Their liabilities are same as of Active Partners.
   c. **Sub-partner:** The transferee of a share of a partner’s interest in a firm is called a sub-partner. Suppose P, the owner of ¼ of firm, transfers ½ of his share to Q. Q will be called a sub-partner. His rights and liabilities are limited.

22. What are the classes of Partnership?
   There are **four type** of partnership are sited bellow:
   1. **Partnership-at-will:** U/s 7 of the Act, partnership is called a partnership-at-will;
      c. when the partnership is not for a fixed period of time, and
      d. when no provision is made as to when and how the partnership will come to an end.
   2. **Particular partnership:** U/s 8 of the Act, a particular partnership is one, which is formed for a particular adventure or a particular undertaking. Such a partnership is usually dissolve on the completion of the adventure or the undertaking.
   3. **Limited partnership:** If the liability of one or more partner of a partnership is limited whether by the contract or by legislation, such a partnership is called limited partnership.

23. What do you mean by Partnership property?
   The property of the firm includes all property and rights and interests in property originally brought into the stock of the firm or acquired by purchases or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also goodwill of the business. Thus the property of the firm means –
   a. property originally brought in by the partners
   b. property obtained while the firm was in business and
   c. the goodwill of the firm.

24. What do you mean by Goodwill?
   Goodwill may be described as the advantage, which is acquired by a firm (over and above the value of stock in trade and capital and funds) from the connections it has built with its customers and the reputation it has gained.

25. What do you mean by Partnership Agreement?
   The writing or oral agreement in which the terms are incorporated to carry on business in a partnership is called the Deed of Partnership or the Articles of Partnership.

26. When can the partnership business be registered?
   A firm can be registered at any time. But an unregistered firm cannot file certain suits. A firm must be registered before it can file suits or claim set-off. A firm can be registered even after the partners have agreed to dissolve the firm.

27. What are the general rules regarding the conduct of the partners to one another? (P – 211)
   a. General duties of partners.
   b. Indemnity.
28. **What are the rules regarding the relationship between the partners as regards the management of the business and their mutual rights?**
   a. Rules regarding the conduct of the business.
   b. Mutual rights and duties
   c. Personal profits earned by partners
   d. Continuance of per-existing terms

29. **What are categories of the authority of a Partner?**
   The authority of a partner to act on behalf of the firm can be divided into two categories:
   a. **Express Authority:** Any authority, which is expressly given to a partner by the agreement of partnership called Express Authority. The firm is bound by all acts done by a partner by virtue of any express authority given to him.
   b. **Implied Authority:** Implied Authority means the authority to bind the firm which arises by implication of law from the facts of partnership.

30. **What are the limitations of a partner in case of implied authority?**
   The section 19(2) of Partnership Act 1932, which are given below, limits the implied authority of a partner:
   1. Submission of a dispute relating to the business of the firm to arbitration,
   2. Open a banking account on behalf of the firm in his own name,
   3. Compromise or relinquish any claim or portion of a claim by the firm,
   4. Withdraw a suit or proceeding filed on behalf of the firm,
   5. Admit any liability in a suit or proceeding against the firm,
   6. Acquire immovable property on behalf of the firm,
   7. Transfer immovable property belonging to the firm, or
   8. Enter in partnership on behalf of the firm.

31. **What are the rules regarding the alteration of authority?**
   The express or implied authority of a partner may be altered, extended, or restricted by agreement between the partners at any time.

32. **What are the rules regarding the authority in Emergency?**
   A partner has authority in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person or ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

33. **What are the liabilities of partners to outsiders?**
   1. Liability of a partner for acts of the firm.
   2. Liability of the firm for wrongful act of a partner.
   3. Liability of firm for misapplication by partners.

34. **What are the rights of Partners?**
2. Can express opinion.
3. Access, inspection, copy.
4. Equity of profits.
5. Interest on capital.
6. Interest on advance.
7. To get indemnity.
8. Application of property of firm.
9. Partner’s authority.
11. Reconstitution.
12. Dissolution.
13. Rights to carrying on a competing business.
14. Right to share profit after retirement.

35. What are the duties of Partners?
   2. To pay indemnity.
   3. To attend diligently.
   4. No remuneration.
   5. Equity of losses.
   6. To pay indemnity for willful neglect.
   7. No private benefit.
   8. No secret profit.

37. What do you mean by retired partner and deceased partner?
Retired partner: A partner who has retired from the firm but allows the use of his name in connection with the firm may become liable to third parties by the principle of holding out.
Deceased partner: The legal representative of a deceased partner do not become liable for the debts of the firm merely because the name of the deceased is used as a partner of the firm name.

38. When can the constitution of a firm be changed?
   1. Introduction of a new partner.
   2. Retirement of a partner.
   3. Expulsion of a partner.
   4. Insolvency of a partner.
   5. Death of a partner.
   6. Transfer of s partner’s interest.

39. When can a partner be expelled?
   1. When the contract of a partnership contains a provision for explosion under stated circumstances.
   2. The power to expel is exercised in good faith by the majority of the partners
   3. The expelled partner has been notice of the charges against him and has been given an opportunity to answer the charges.

40. What are the rights of an outgoing partner?
1. Restraint of trade.
2. To carry on competing business.
3. To share subsequent profits.
4. Revocation of continuing guarantee by change in firm.

41. What do you mean by dissolution of firm?
Dissolution of a firm means the end of a firm by the breakup of the relation of partnership between all the partners.

42. What are the consequences of dissolution?
1. Acts done after dissolution: Until public notice is given of the dissolution, the partners continue to be liable to third parties for all acts done in connection with the affairs of the firm.
2. Winding up: Partner is liable to winding up by the following way:
   a. Meet up liabilities by sale of properties; and
   b. Meet up liabilities of 3rd parties at first
   If any deficit arise in doing the above work partners will bear that according to the terms of agreement of partnership. And
   If any surplus arises they have right to take the same in proportion of their respective share.
3. Continuing authority of partners for purposes of winding up: Partners have right to-
   a. complete pending work regarding winding up; and
   b. complete incomplete transactions.
4. Profit earned after dissolution: If any partner earns any profit from any transaction connected with the firm after its dissolution, he must share it with the other partners and the legal representative of the deceased partners.
5. Returns of premium: Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term, he shall be entitled to repayment of the premium.
6. Right to restrain from use of firm’s name: Every partner has right to restrain any other partner from using firm’s goodwill. But if a partner has purchased the goodwill of the firm, he can use the firm’s name.

43. What are the modes of setting accounts upon dissolution?
Subject to agreement between the partners following rules are laid down for settlement of accounts—
1. Losses are to be paid first out of profits, next out of capital, and lastly if necessary by the partners individually in the proportions in which they were entitled to share profits. Capital deficiency is to be treated as loss and is to be borne by the partners in proportion to the profit sharing ratio.

2. The assets of the firm including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:
   a. In paying the debts of the firm to third parties;
   b. In paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;
   c. In paying to each partner ratably what is due to him on account of capital; and
   d. The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.
   e. If a partner becomes insolvent or otherwise cannot pay his share of the contribution, the capital of the solvent partners cannot be returned in full. In this case, the solvent partners must share ratably the available assets, i.e. the rule laid down in the English case, Garner Vs. Murray.

3. **Payment of the firm debts and of separate debts:** Where there are joint debts from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of debt of the firm, and if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.
Negotiable Instrument Act-1881.

1. What is promissory note?
A promissory note is a negotiable instrument, containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to order of a certain person, or to the bearer of the Instrument. It is not a bank note or currency. There are two parties in the promissory note; maker and the payee.

2. What do you mean by Negotiable Instruments?
'Negotiable' means transferable by delivery, and 'Instrument' means a written document by which a right is created in favor of some person who is holder of it. So, Negotiable Instrument means document transferable by delivery. Besides above, Negotiable Instrument means a promissory note, bill of exchange or cheque.

3. Define cheque with essential elements.
A Cheque is a bill of exchange drawn upon a specified banker and payable to bearer or on demand. The essential features of cheque are given below:
1). Written.
2). Signed
3). Payable to bearer, order or on demand
4). Sufficient funds
5). No legal bar to cheque being hand written
6). Tally of signature with specimen signature.
7). Dated
8). Time of presentation
9). Validity (six months)
10). Unconditional order.
11). Certain amount of money.
12). Transferability.
13). Printed

4. Who can cross a cheque?
A cheque can be crossed by the drawer, the holder and the bank (for collection). But, the holder and the bank can cross a cheque under the following circumstances: -
- Where a cheque is uncrossed, the holder may cross it generally or specially.
- Where a cheque is crossed generally, the holder may cross it specially.
- Where a cheque is crossed generally and specially, the holder may add the words, "not negotiable"
- Where a cheque is crossed specially, the banker to whom it is crossed specially may again cross it specially to another banker, his agent, for collection.
5. How does a promissory note differ from bill of exchange?
Or, Difference between promissory note and bill of exchange.
The differences between the promissory note and bill of exchange are stated here under:

<table>
<thead>
<tr>
<th>Terms of differences</th>
<th>Promissory Note</th>
<th>Bill of Exchange</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition</td>
<td>A promissory note is a negotiable instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to order of a certain person, or to the bearer of the instrument.</td>
<td>A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.</td>
</tr>
<tr>
<td>2. Number of parties</td>
<td>Two parties; the maker and the payee</td>
<td>Three parties; drawer, drawee and payee.</td>
</tr>
<tr>
<td>3. Acceptance</td>
<td>No acceptance is necessary</td>
<td>Acceptance is required</td>
</tr>
<tr>
<td>4. Relationship</td>
<td>The maker stands in an immediate relationship to the payee</td>
<td>A drawer stands in immediate relationship with the acceptor and not to the payee.</td>
</tr>
</tbody>
</table>

6. What are the difference between bill of exchange and Cheque?
Difference between Bill of exchange and cheque are sited below:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Bill of exchange</th>
<th>Cheque</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Drawn</td>
<td>Can be drawn upon any person</td>
<td>Can be drawn upon only a bank</td>
</tr>
<tr>
<td>2. Acceptance</td>
<td>Acceptance is required</td>
<td>Acceptance not required</td>
</tr>
<tr>
<td>3. Payment</td>
<td>Payable only after maturity</td>
<td>Payable on demand</td>
</tr>
<tr>
<td>4. Stamped</td>
<td>Must be stamped</td>
<td>Not required</td>
</tr>
<tr>
<td>5. Crossed</td>
<td>Cannot be crossed</td>
<td>May be crossed</td>
</tr>
</tbody>
</table>

7. What are the Characteristics of Negotiable Instruments?
1). Must be written & signed by the parties.
2). Must be payable by legal tender money and the sum of money must be certain.
3). Must have negotiability, but the payee must be certain.
4). Must contain in an order to pay.
5). Should be unconditional.
6). It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay. The transferee can sue in his own name.
7). It has the popularity in commercial transaction because of their easy negotiability and quick remedies.
8). A document, which fails to qualify as a negotiable instrument, may nevertheless be used as evidence of the fact of indebtedness.

8. When bill of exchange dishonored? / What are the modes of Dishonor?
1). By non-acceptance
2). By non-payment.
9. Who can accept a bill of exchange?
Only the following persons can accept a the bill of exchange:-
1). The drawee of the bill.
2). The drawee in case of need.
3). The legal representative, when the drawee is dead.
4). The Official Assignee or Official Receiver.
5). Acceptance for several drawee not partner.
6). Acceptance for honor.

10. What is acceptance for honor?
When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not liable on the bill, may accept the bill for honor of any party thereto. This is called acceptance for honor.

11. Distinguish between a cheque and a promissory note.
A cheque is a bill which is drawn on any bank for payment on presentation.
On the other hand, a promissory note is a unconditional promise to pay a certain amount by the debtor to the creditor on a certain future date.

12. Cheque crossed with the words 'Not Negotiable'- what does it mean?
A cheque marked with the words "Not Negotiable" can be transferred or assigned by the payee. This sort of words on cheque refers that transferee of this cheque will get the same right, as regards payment, as the transferor had.
Though there are the words 'not negotiable' written on the face of the cheque, it can be transferable by authorization of transferor and the transferee will get same title as the transferor had.

13. What is meant by payment for honor?
when the bill is presented to the drawee for payment and the drawee dishonor it and subsequently it is paid by the referee, acceptor or by a third party, it is known as payment for honor.

14. What is the difference between a general crossing and special crossing of cheque?
The difference between a genera crossing and special crossing of cheque as follows:

<table>
<thead>
<tr>
<th>Subject</th>
<th>General cross cheque</th>
<th>Special cross cheque</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition</td>
<td>When cheques are crossed by two parallel line on the left corner of the cheque</td>
<td>When cheques are crossed by two parallel lines mentioning the name of any bank,</td>
</tr>
<tr>
<td></td>
<td>mentioning or not mentioning &amp; co, not negotiable, account pay etc, then it is known</td>
<td>then it is known as special crossed cheque.</td>
</tr>
<tr>
<td></td>
<td>as general crossing of cheque</td>
<td></td>
</tr>
<tr>
<td>Collection</td>
<td>The cheque can be collected through any bank.</td>
<td>The cheque only be collected through the bank mentioned in the cheque.</td>
</tr>
</tbody>
</table>

15. What do you mean by Bill of Exchange?
A Bill of Exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.
16. What is distinguish between dishonor by non-performance and dishonor by non-acceptance?
Dishonor by non-performance:
when any negotiable instrument is not presented in compliance with the terms and condition of the instrument and is dishonor subsequently on presentation by the Drawee/Acceptor. It is known as dishonor by non-performance.
Dishonor by non-acceptance:
When only bill of exchange is presented to the Drawee for acceptance and the Drawee disagree to give acceptance. It is known as dishonor of bill of exchange by non-acceptance.

Other Important Questions and Answers

17. What are the essential elements of a Promissory Note?
i). Written
ii). Signed by the maker / marked/crossed
iii). Promise to pay (not implied or inferred)
iv). Unconditional
v). The maker must certain and definite
vi). Stamped
vii). Certain sum of money
viii). Legal tender money
ix). Payable to a definite person
x). Payable on demand or after definite period of time

18. Who are called Drawer, Drawee, Payee, Holder and Acceptor of a Bill of Exchange?
- **Drawer**: The maker of the bill of exchange
- **Drawee**: The person who is directed to pay the bill of exchange.
- **Payee**: The person who will receive the money
- **Holder**: The payee who has the custody of the bill of exchange
- **Acceptor**: When the drawee accepts the bill, the drawee becomes the acceptor.

19. What are the different types of cheque?
1). **Open cheque**: Payable in cash across the counter of the bank
2). **Cross cheque**: Two parallel lines marked across its face paid only another banker not across the counter of the bank.

20. What are the essential elements of a bill of exchange?
i). Written
ii). Signed by the drawer
iii). Unconditional order to pay
iv). The drawer, drawee and payee must be certain and definite individuals
v). Certain sum of money
vi). Legal tender money
vii). Stamped
viii). Payable on demand or after definite period of time
21. **What do you mean by Drawee in case of need?**
Sometimes the name of another person is mentioned as the person who will accept the bill if the original drawee does not accept it. Such person is called a 'drawee in case of need'.

22. **What are the different modes of crossing of a cheque?**
1). General crossing: Putting two parallel lines across the face
2). Special crossing: Putting two parallel lines across the face along with bank name between the parallel lines

23. **What are the usual remarks of crossing a cheque?**
1). Account Payee
2). Not Negotiable

24. **List the different parties of Cheque.**
1). Drawer.
2). Drawee.
3). Payee.
4). Holder.
5). Endorser.
6). Endorsee.
7). Holder in due-course.

25. **What are the chains of crossing of a cheque?**
   i. Where the cheque is uncrossed, the holder can cross it generally or specially.
   ii. Where the cheque is crossed generally, the holder can cross it specially.
   iii. Where the cheque is crossed generally or specially, the holder may add the word "Not Negotiable"
   iv. Where the cheque is crossed specially, the banker to whom it is crossed it specially may again cross it specially to another banker, his agent, for collection.

26. **Who is the holder in due course?**
The holder in due course is a particular kind of holder. The holder of a negotiable instrument is called the 'holder in due course' if he satisfies the following conditions:
   - He obtained the instrument for valuable consideration.
   - He became holder of the instrument before its maturity, i.e. before the mentioned in it became payable.
   - He had no cause to believe that any defect existed in the title of the person from Whom he derived his title.

27. **What do you mean by holder?**
The holder of a negotiable instrument means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

28. **What do you mean by Banker's Draft?**
A bill of exchange drawn by a bank is called banker's draft.
29. Who can cross a cheque?
A cheque can be crossed by
- The drawer
- The holder
- The bank (for collection).
The holder and the bank can cross a cheque under the following circumstances:
- Where a cheque is uncrossed, the holder may cross it generally or specially.
- Where a cheque is crossed generally, the holder may cross it specially.
- Where a cheque is crossed generally and specially, the holder may add the words, "not negotiable"
- Where a cheque is crossed specially, the banker to whom it is crossed specially may again cross it specially to another banker, his agent, for collection.

30. What are the rights of Holder in Due Course?
The holder in due course of negotiable instruments has the following rights:
1). Defects of instruments are eliminated.
2). Unauthorized acts of an agent may be valid.
3). Good title in an inchoate stamped instrument.
4). Liability of prior parties to holder in due course.
5). Holder can file suits in his own name.
6). Acceptance of bill drawn in fictitious name.
7). Unlawful instruments.
8). Estoppel against denying original validity of instrument.
9). Estoppel against denying capacity of payee to endorse.
10). Transferee from a holder in due course.

31. What are the essential features of Negotiable Instrument?
The essential features of Negotiable Instrument are listed below:
1). Writing and signature.
2). Money.
3). Negotiability.
4). Title.
5). Notice.
6). Presumptions.
7). Special procedure.
8). Popularity.
9). Evidence.

32. What do you mean by acceptance?
A bill of exchange is said to be accepted when the drawee puts his signature on it, thereby acknowledge his liability under the bill.

33. What are the types of acceptance?
1). General Acceptance: Unconditional and unqualified
2). Qualified Acceptance: Conditional

34. Who can present a bill for acceptance?
The holder or agent can present a bill for acceptance.
35. **What do you mean by presentment?**
Placing of the negotiable instrument before the drawee is called presentment. Presentment may be
for any of the following three purposes:
- Presentment for acceptance.
- Presentment for sight
- Presentment for payment.

36. **Who can accept a bill?**
1). The drawee of the bill.
2). The drawee in case of need.
3). The legal representative, when the drawee is dead.
4). The Official Assignee or Official Receiver.
5). Acceptance for several drawee not partner.
6). Acceptance for honor.

37. **What do you mean by Negotiation?**
Negotiation of an instrument is the process by which the ownership of the instrument is transferred
from one person to another.

38. **What do you mean by Endorsement or Endorsement?**
Endorsement means signature of the holder made with the object of transferring the document. The
person who makes the endorsement is called the endorser.

39. **What do you mean by Payment in Due course of a Negotiable Instrument?**
Payment in due course means payment in accordance with the apparent tenor of the instrument in
good faith and without negligence to any person in possession thereof under circumstances, which
do not afford a reasonable ground for believing that he is not entitled to receive payment of the
amount therein mentioned.

40. **What are the principles of estoppels?**
The principle of estoppels is a rule of evidence. When a man has, by words spoken or written, or by
conduct, induced another to believe that a certain state of things exists, he will not be allowed to
deny the existence of that state of things.
Estoppels arise when you are precluded from denying the truth of anything, which you have
represented as a fact, although it is not a fact.
Bankruptcy Act -1997

1. What do you understand by bankruptcy?
Bankruptcy is also referred to as the insolvency. It means one unable to pay his debts. It has two conditions:
- A person is to be a debtor who has not sufficient assets to pay of his debts.
- He will do any act of insolvency.

2. What are the purposes of insolvency?
The purposes of the law insolvency are as under:
- Distribution of assets of the insolvent rationally.
- Settlement of all liabilities of the insolvent to make him free.
- To save the interest of creditors.
- New life starting of the insolvent.

3. Who are official receivers?
As per section 64 of the Bankruptcy Act 1997 the court appoints official receiver having general power as conferred by section 65 of the Act for administering the property of the insolvent. The court may itself act as an official receiver under section 70 of the Act.

4. Who may be adjudged/declared bankruptcy?
Any person may declare bankruptcy, who-
- Is domiciled or maintains his principal business office in Bangladesh.
- At any time within a year immediately before filing of the plaint, ordinarily resided in, or had a dwelling house or a place of business in Bangladesh.
- Generally carries on business in Bangladesh.

5. Who may not be adjudged bankruptcy?
The following persons may not declare bankruptcy
- Any Govt. organization or judicial body.
- Any charitable or religious body.
- Such statutory bodies whose principle objective is not financial gain.
- Any autonomous body.

6. What is meant by discharge of bankruptcy?
Discharge of bankruptcy means the insolvent is free from his all debts or claims against him. It requires an order of the court on an application made to it to the effect that the insolvent is discharged all debts & claim etc.
7. Can an infant be insolvent?
No, an infant cannot be declared as an insolvent.

8. What properties of a bankrupt debtor are exempted from attachment/freeze?
The following properties are exempted from attachment-
   1. Tools used by the debtors. (maxim 3 lac)
   2. Wearing apparels, household furniture or accessories (Maxi 3 lac).
   3. Debtor’s un-mortgaged dwelling place. (Not exceeding 2500 sft).

9. What are the acts of insolvency?
Following are the acts of insolvency-
   1. If he transfers of all his property for the benefit of creditors generally.
   2. If he transfers of property with intent to defeat or delay creditors.
   3. Act of fraudulent preference.
   4. Stay outside the country or goes to outside the country.
   5. Absent himself from office or residence.
   6. Escaped/Hide him of communication from the creditors.
   7. Submit application of insolvency by the debtor to court.
   8. If he notice for suspension of payment of debt.

10. What are the objects of Bankruptcey Act?
The objects of bankruptcy act are-
   1. To ensure the fair distribution of the property of a bankrupt debtor among his creditors.
   2. To allow the debtor to relieve himself of the burden of his debts and start again.
   3. To prevent ill-treatment of the process.

11. When debtor can apply for Insolvent?
When a debtor is unable to pay his debts amount to Tk.20, 000.

12. When creditor can apply?
When the debtor owing by the debtor to the creditor amounting Tk.500,000 or if the two or more creditors join the petition the aggregate amount to such creditors amount to tk.500,000.

13. What is right of Bankrupt to surplus property?
The bankrupt shall be entitled to receive any surplus remaining after payment in full of his creditors with interest as provided by this Act and of expenses of the proceedings taken there under.

1. **What is international commercial arbitration?**
   The arbitration that arises between the parties in different countries and which is created for settlement of disputes, non-compliance by any party of stipulations relating to any international transaction that is called international commercial arbitration. Like L/C.

2. **What matters cannot be referred to arbitration?**
   The following matters cannot be referred to arbitration:
   - Marital matter. (Like divorce).
   - Testamentary matter, (like validity of a will).
   - Insolvency matters.
   - Matters relating to the guardianship.
   - Criminal matters.
   - Questions relating to charities or charitable trust.

3. **What is an arbitration agreement?**
   An arbitration agreement means a written agreement to submit present or future differences to arbitrations, whether an arbitrator is named therein or not.

4. **What is arbitration?**
   Arbitration means the settlement of dispute by referring the dispute to third party and abiding/taking by his decision.

5. **Discuss the ground on which the court can:**
   a. **Set aside award, and**
   b. **Remit an award for reconsideration under The Arbitration Act 2001**
      a) Set aside award: The decision of arbitration may be set aside as under:
         - The arbitrator umpire adopts unfair means.
         - The order is made after the setting aside of the order.
         - The decision is made unjustified.
      b) Remittance of the award:
         - The decision is uncertain.
         - Any decision outside of the arbitration brought in the arbitration for decision.
         - The decision is impossible for execution.
6. Discuss the characteristics of an arbitration agreement.
   An arbitration agreement shall be in writing and, it deemed to be in writing if there contained in:
   - A document signed by the parties.
   - An exchange of letters, telex, telegrams, fax, e-mail, or other means of telecommunication which provide a record of the agreement.
   - An exchange of statement of claim and defenses in which the existence of the agreement is alleged by one party and not denied by the other.

7. What is effect of an arbitration agreement?
   When some persons have entered into an agreement to refer disputes relating to a matter to arbitration they may be prevented from agitating the same matter in court of law.

8. What is procedure of appointment of arbitrators?
   Tow arbitrators are appointed by one of each party and third by the arbitrators.

9. What is award?
   The award means the decision of arbitrator or the umpire.

10. What are essential futures of award?
    The essential futures of award are stated below:
    - Writing
    - Date and signature
    - Fees and charge
    - Legality

11. Describe the appeals procedure.
    An appeal shall lay the following orders of the court to the Appellate Division, namely-
    1. Setting aside (out of the way) or refuse to set aside an arbitral award.
    2. Refuse to enforce the arbitral award.
    3. Refuse recognize or enforce foreign arbitral award.

12. How many types of Arbitration are there?
    There are three types of arbitration in there:
    (a) Arbitration without the intervention of court.
    (b) Arbitration through court when no suit pending.
    (c) Arbitration a suit.