GENERAL AND COMMERCIAL LAW

Sources of Law

Q. What are the sources of Law? Or short notes on "Sources of Law"

The sources of law of Bangladesh is based upon statues of the Bangladeshi legislature, English law and Indian law modified and adapted by judicial decisions.

1. **Statues of the Bangladeshi Legislature**

The legislature is the main source of law in modern times. In Bangladesh, the Central and the state legislatures possess law making powers and have exercised their power extensively.

2. **English mercantile law**

Many rules of English Mercantile Law have been incorporated into Bangladeshi Law through statutes and judicial decisions. It contains rules originating from the following sources

- Maritime usages which developed during 14^{th} and the 15^{th} centuries among merchants trading in the European ports
- Rules which developed by custom in England
- Rules of Roman Law
- Rules of Equity
- Statutes of the British Parliament

3. **Judicial decision or Precedents**

Judge interpret and explain statutes. Rules of equity and good conscience are incorporated into law through judicial decision. When the law is silent on a point, the judge has to decide the case according to his idea what is equitable.

4. **Custom and Usage**

A customary rule is binding where it is ancient, reasonable, and not opposed to any statutory rule. A custom becomes legally recognized when it is accepted by a court and is incorporated in a judicial decision.

Q. Define "Law" both in commercial and general perspective";

Definition of Law in general perspective

Law, as it is, is the command of the Sovereign. It means

(1) law has its source in sovereign authority
(2) law is accompanied by sanctions, and
(3) the command to be a law should compel a course of conduct

According to Holland, Law is, " a rule of external human action enforced by the sovereign political authority". From this definition it follows that there are three essential characteristics of law.

1. Law is a rule relating to the actions of human beings.
2. Law attempts to regulate the external actions of human beings
3. Law is enforced by the State.

According to Salmond
Law is the body of principles recognized and applied by the State in the administration of Justice.

Definition of Law in commercial

Commercial law, also known as business law, is the body of law that applies to the rights, relations, and conduct of persons and businesses engaged in commerce, merchandising, trade, and sales. It is the part of law which regulates the transactions of the mercantile community.

The scope of commercial law is large. It includes the laws relating to contract, partnership, negotiable instruments, sale of goods, companies etc.

Q. Define Law according to Holland.

According to Holland, Law is, " a rule of external human action enforced by the sovereign political authority". From this definition it follows that there are three essential characteristics of law.

4. Law is a rule relating to the actions of human beings.
5. Law attempts to regulate the external actions of human beings
6. Law is enforced by the State.

Q. "No man is above law"- Discuss or "All are equal in the eye of Law"- Discuss

In second place, Rule of law means that, "no man is above law". Every man whatever his rank or condition, is subject to the ordinary law of the state and amenable to the jurisdiction of ordinary tribunals. What is law- legal right and legal obligation for us- must hold equally as such for all citizens." In other words, Rule of Law means

a) equality before the law,
b) every citizen is subject to the ordinary law of the land and
c) the citizen has to face trial in the same law courts, irrespective of his status or position in the society

Q. What do you understand by the Rule of Law?
Or What are the three Rules of Law?
or What are the benefits of the Rule of Law?

Rule of Law:
In earlier times certain classes and individuals possessed special privileges and were judged by special law. The modern view is to apply the same law over all persons in the State and to give all persons equal rights and privileges for the protection of their human liberties. Democracy can remain only in a society of equals.

The three Rules of Law:
The concept of equality of all persons before law is the basis of what is called the Rule of law. The Rule was summarized by Dicey' as follows:

1. The Rule of Law states that. " no man is punishable or can be lawfully made to suffer in body of goods excepts for a distinct breach of law established in the ordinary legal manner before the ordinary courts.. In other words
   a) there must be supremacy of law

b) no one shall be punished except for definite breach of law and
c) the breach of law must be proved in a duly constituted court of law.

No citizen can be arrested or imprisoned, unless he violates specifically and law of the country in force and is accused of a charge by the court. Thus the rule of law implies equal protection of law.

2. In the second place, Rule of law means that, "no man is above law"

Every man whatever his rank or condition, is subject to the ordinary law of the state and amenable to the jurisdiction of ordinary tribunals. What is law- legal right and legal obligation for us- must hold equally as such for all citizens." In other words, Rule of Law means

a) equality before the law,
b) every citizen is subject to the ordinary law of the land and
c) the citizen has to face trial in the same law courts, irrespective of his status or position in the society

3. In the third place, the Rule of Law is the result of statutes and judicial decisions determining the rights of private persons. Thus the constitutional law of the country follows from the ordinary law of the land.

Q. Short notes

– **Decree**

A formal and authoritative order, especially one having the force of law: a presidential decree.

– **National emblem**

A national emblem symbolically represents a nation. Most national emblems originate in the natural world, such as animals or birds, but another object may serve. National emblems may appear on many things such as the national flag, coat of arms, or other patriotic materials.

– **National anthem**

A patriotic song or hymn; *esp* **:** one adopted officially and played or sung on formal occasions as a mark of loyalty to the nation

– **Act to God**

A natural catastrophe which no one can prevent such as an earthquake, a tidal wave, a volcanic eruption, or a tornado. Acts of God are significant for two reasons: 1) for the havoc and damage they wreak, and 2) because often contracts state that "acts of God" are an excuse for delay or failure to fulfill a commitment or to complete a construction project. Many insurance policies exempt coverage for damage caused by acts of God, which is one time an insurance company gets religion. At times disputes arise as to whether a violent storm or other disaster was an act of God or a foreseeable natural event.

– **Deflation**

Deflation is a decrease in the general price level of goods and services. Deflation occurs when the inflation rate falls below 0% (a negative inflation rate). This should not be confused with disinflation, a slow-down in the inflation rate (i.e. when inflation declines to lower levels). Inflation reduces the real value of money over time; conversely, deflation increases the real value of money – the currency of a national or regional economy. This allows one to buy more goods with the same amount of money over time. Economists generally believe that deflation is a problem in a modern economy because they believe it may lead to a deflationary spiral.

Constitution

Q. Under what circumstance the High Court Division can pass an order for the infringement of the fundamental rights under Article 102 of the Constitution?

Under Article 102 of the Constitution the People's Republic of Bangladesh the High Court Division exercises its power of judicial review by issuing writs in the nature of prohibition, mandamus (do it), certiorari (lack or excess of jurisdiction) and quo warranto, against the concerned public functionaries and a writ of habeas corpus [have the corps (body) before us (Court)] against anyone, including a private individual, if there is a violation of any relevant provision of this Article.

The jurisdiction under this Article is known as Special Original Jurisdiction or writ jurisdiction. The Rule Nisi, which may be issued under this Article, requires the respondent to explain that his action is not unlawful and the temporary injunction in the form of 'stay', which also may be granted under this Article, impedes the concerned public functionaries for a certain time or until the adjudication of the matter from overstepping their power in violation of the Constitution. An essay or article in a newspaper is not enough to interpret the Article 102 comprehensively or entirely; so the write-up below is simply a brief note about this magnificent Constitutional right.

Q. State the various fundamental rights which are being enjoyed by a citizen of Bangladesh.

Equality before law
All citizens are equal before law and are entitled to equal protection of law.

Discrimination on grounds of religion, etc
(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

(2) Women shall have equal rights with men in all spheres of the State and of public life.

Equality of opportunity in public employment
There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.

Prohibition of foreign titles, etc

No citizen shall, without the prior approval of the President, accept any title, honour, award or decoration from any foreign state.

Right to protection of law
To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action etrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Protection of right to life and personal liberty
No person shall be deprived of life or personal liberty save in accordance with law.

Safeguards as to arrest and detention
No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

Prohibition of forced labour
All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Protection in respect of trial and punishment
No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.

Freedom of movement
Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.

Freedom of assembly
Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health.

Freedom of association
Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order :

Freedom of thought and conscience, and of speech
Freedom of thought and conscience is guaranteed.

Freedom of profession or occupation
Subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

Freedom of religion
(1) Subject to law, public order and morality –

(a) every citizen has the right to profess, practise or propagate any religion;

(b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.

Rights to property
Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.

Protection of home and correspondence
Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health

(a) to be secured in his home against entry, search and seizure; and

(b) to the privacy of his correspondence and other means of communication.

Enforcement of fundamental rights
The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.

Q. How may writs are there in the Constitution.
A writ is a remedial right for the enforcement of substantive law. Writ means a written document by which one is summoned or required to do or refrain from doing something. Writ is a very important piece of legal remedies which aims at to provide measure for the infringement of fundamental rights of the people of a country.

The writs are five in number

1. **Writ of Habeas Corpus**

   Habeas Corpus is a kind of order of the Court that command the authorities hold an individual in custody to bring that person in the Court. The authorities must then explain why he is being held. The Court can order the release of the individual if explanation is unsatisfactory. Thus Habeas corpus is a process for securing the personal liberty of the subjects.

2. **Writ of Certiorari**
   Certiorari is meant to control the action of the inferior Courts and to make it certain that they have not exceeded their jurisdiction.

3. **Writ of Prohibition**

   Prohibition prevents a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance. The purpose of prohibition is to limit the jurisdiction of the Court

4. **Writ of Mandamus**

   Mandamus is an order or command of the Court directing to any person, corporation or inferior tribunal requiring him to do some particular thing as his duty when a Court, Tribunal, Authority or person has failed to perform his statutory obligation, High Court, compels the Court or person to do his statutory obligation.

5. **Writ of Quo-Warranto**

   Quo-Warranto is a writ by which the High Court verifies the title of a person to the office and thus the unauthorized occupants are ousted by judicial order. When a person illegally holds a public office created by law, the High Court on the application of any person can by issuing quo-warranto, ask the person to show on what authority he holds the office and can make him not to hold such office further

Q. Briefly describe the justification of High Court Division and Appellate Division

According to the Article 102 conferred power upon the High Court Division to make Judicial Review of the decision of the public body as follows :

Powers of the High Court Division to issue certain orders and direction,etc.

(1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any the fundamental rights conferred by Part III of this Constitution.

(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law-

(a) on the application of any person aggrieved, make an order-

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order-

(i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person holding or purporting to hold a public office to show under whatauthority he claims to hold that office.

(3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass any interim or other order in relation to any law to which article 47 applies.

(4) Whereon an application made under clause (1) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of-

(a) prejudicing or interfering with any measure designed to implement any development programme, or any development work; or

(b) being otherwise harmful to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorized by him in that behalf) has been given an opportunity or being heard, and the High Court Division is satisfied that the interim order would not have the effect referred to in sub-clause (a) or sub-clause (b). (5) In this article, unless the context otherwise requires, "person" includes a statutory public authority and any court or tribunal, other than a court or tribunal established under a law relating to the defense services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.

Q. Discuss the term " Writ of Habeas Corpus"?

A writ of habeas corpus directs a person, usually a prison warden, to produce the prisoner and justify the prisoner's detention. If the prisoner argues successfully that the imprisonment is in violation of a constitutional right, the court may order the prisoner's release. Habeas corpus relief also may be used to obtain custody of a child or to gain the release of a detained person who is insane, is a drug addict, or has an infectious disease. Usually, however, it is a response to imprisonment by the criminal justice system.

Q. Define "Fundamental Rights" of a citizen.

Fundamental rights are a generally regarded set of entitlements in the context of a legal system, wherein such system is itself said to be based upon this same set of basic, fundamental, or inalienable entitlements or "rights." Such rights thus belong without presumption orcost of privilege to all human beings under such jurisdiction. The concept of human rights has been promoted as a legal concept in large part owing to the idea that human beings have such "fundamental" rights, such that transcend all jurisdiction, but are typically reinforced in different ways and with different emphasis within different legal systems.

Q. How an ordinance is promulgated?

Clause (1)
At any time when Parliament stands dissolved or is not in session , if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament:

Provided that no Ordinance under this clause shall make any provision-
(i) which could not lawfully be made under this Constitution by Act of Parliament;
(ii) for altering or repealing any provision of this Constitution; or
(iii)continuing in force any provision of an Ordinance previously made.

Clause (2)
An Ordinance made under clause (1) shall be laid before Parliament at its first meeting following the promulgation of the Ordinance and shall, unless it is earlier repealed, cease to have effect at the expiration of thirty days after it is so laid or, if a resolution disapproving of the Ordinance is passed by Parliament before such expiration, upon the passing of the resolution.

Clause (3)
At any time when Parliament stands dissolved the President may, if he is satisfied that circumstances exist which render such action necessary, make and promulgate an Ordinance authorising expenditure from the Consolidated Fund, whether the expenditure is charged by the Constitution upon that fund or not, and any Ordinance so made shall, as from its promulgation, have the like force of law as an Act of Parliament.

Clause (4)
Every Ordinance promulgated under clause (3) shall be laid before Parliament as soon as may be, and the provisions for articles 87, 89 and 90 shall, with necessary adaptations, be
complied with in respect thereof within thirty days of the reconstitution of Parliament.

Q. What are the five basic needs of life according to the Article 15 of the Constitution of Bangladesh

According to the constitution of Bangladesh it shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens-

(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;

(b) the right to work, that is the right to guaranteed employment at a reasonable wage
having regard to the quantity and quality of work;

(c) the right to reasonable rest, recreation and leisure; and the right to social security,
that is to say to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

Q. Briefly describe the concept of Non-party Care Taker Government.

The Caretaker Government of Bangladesh (Bengali: বাংলাদেশের তত্ত্বাবধায়ক সরকার) is a form of government system in which the country is ruled by a selected government for an interim period during transition from one government to another, after the completion of tenure of the former. As the outgoing government hands over their power, the caretaker government comes into place. Members of the caretaker government do not belong to any political party; nor are they allowed to contest the elections. The main objective of the caretaker government is to create an environment in which an election can be held in a free and fair manner without any political influence of the outgoing government. It is not empowered to take any policy decisions unless it is necessary. The head of the Caretaker government is called the Chief Adviser (in place of Prime Minister) and is selected by the President, and the Chief Adviser selects the other advisers. The administration is generally distributed between the advisers. The Chief Adviser and the other advisers are committed for their activities to the President.

**Q. What is the composition of Care Taker Government? or
What procedures are to be followed for the selection of the Chief Advisor under the Constitution of Bangladesh?**

Composition of the Non-Party Care-taker Government

1. Non-Party Care-Taker Government shall consist of the Chief Adviser at its head and ten or less other Advisors, all of whom shall be appointed by the President.
2. The Chief Adviser and other Advisers shall be appointed within fifteen days after Parliament is dissolved or stands dissolved, and during the period between the date on which Parliament is dissolved or stands dissolved and the date on which the Chief Adviser is appointed, the Prime Minister and his cabinet who were in office immediately before Jatiyo Sangshad (Parliament) was dissolved or stood dissolved shall continue to hold office as such.
3. The President shall appoint as Chief Adviser the person who among the retired Chief Justice of Bangladesh retired last and who is qualified to be appointed as an Adviser under this article: Provided that if such retired Chief Justice is not available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Chief Justice of Bangladesh retired next before the last retired Chief Justice.
4. If no retired Chief Justice is available or willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired last and who is qualified to be appointed as an Adviser under this article: Provided that if such retired Judge is not

available or is not willing to hold the office of Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired next before the last such retired Judge.

5. If no retired judge of the Appellate Division is available or willing to hold the office of Chief Adviser, the President shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among citizens of Bangladesh who are qualified to be appointed as Advisers under this article.
6. Notwithstanding anything contained in this Chapter, if the provisions of clauses (3), (4) and (5) cannot be given effect to, the President shall assume the functions of the Chief Adviser of the Non-Party Care-taker Government in addition to his own functions under this Constitution.
7. The President shall appoint Advisers from among the persons who are
    - qualified for election as members of parliament;
    - not members of any political party or of any organisation associated with or affiliated to any political party;
    - not, and have agreed in writing not to be, candidates for the ensuing election of members of parliament;
    - not over seventy-two years of age.
8. The Advisers shall be appointed by the President on the advice of the Chief Adviser.
9. The Chief Adviser or an Adviser may resign his office by writing under his hand addressed to the President.
10. The Chief Adviser or an Adviser shall cease to be Chief Adviser or Adviser if he is disqualified to be appointed as such under this article.
11. The Chief Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Prime Minister and an Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Minister.
12. The Non-Party Care-taker Government shall stand dissolved on the date on which the Prime Minister enters upon his office after the constitution of new parliament.

Q. Who is the Head of the Care Taker Government?

The Chief Advisor is the Head of the Caretaker Government of the People's Republic of Bangladesh who takes over as the Head of Government for 90 days during transition between one elected government to another. The Caretaker Government that is mandated only to hold the Parliamentary Elections in Bangladesh. The Chief Advisor heads an Advisory Committee comprising ten Advisors. With powers roughly equivalent to those of the Prime Minister of elected governments, his executive power is constrained with certain constitutional limitations. He, as well as the other advisors, are selected so as to be acceptable to all major political parties.

Q. Short notes/Distinction

Equality and Equity

1. Equality denotes that everyone is at the same level, whereas equity in business parlance denotes the ownership of the shares of a company.

➢ Equity refers to the qualities of justness, fairness, impartiality and even handedness, while equality is about equal sharing and exact division.

3. Equality equals quantity, whereas equity equals quality.

Law relating to Arbitration

Q. What is arbitration? What is the composition of an arbitral tribunal under the Arbitration Act 2001?

Arbitration:
When there is any dispute between two parties regarding any matter (which may or may not be pending in court) they may refer it to arbitration so that it may be settle by a private tribunal. The reference must be done by an agreement.

According to Arbitration Act 2001 "Arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not".

Composition of an arbitral tribunal:

Number of arbitrators:

The parties are free to determine the number of arbitrators. Failing the determination of a number, the tribunal shall consist of three arbitrators. Unless otherwise agreed by the parties, where they appoint an even number of arbitrators, the appointed arbitrators shall jointly appoint an additional arbitrator who shall act as a Chairman of the tribunal.

Appointment of arbitrators:

1. The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.
2. A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
3. Failing any agreement
    a. In an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made upon request of a party-
        i. By the District Judge in case of arbitration other than international commercial arbitration;
    b. In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall be chairman of the arbitral tribunal.
4. Failure to appoint. If the appointment procedure agreed on by the parties applies and-
    - A party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party; or
    - The two appointed arbitrators fail to agree on the third arbitrator within 30 days from the date of their appointment
    - By the District Judge except in case of international commbercial arbitration; and
    - By the Chief Justic or by any other Judge of the Supreme Court designated by the Chief Justice in case of international commercial arbitration
5. The third arbitrator appointed shall be the chairman of the said tribunal.
6. If more htan one arbitrator are appointed the District Judge, or the Chief Justice or any other Judge of the Supreme Court designated by the Chief Justice or any other Judge of the Supreme Court designated by the Chief Justice, as the case may be, shall appoint one person from among the said arbitrators to be the chairman of the arbitral tribunal.

Q. What matters can be referred n to Arbitration

All matters in dispute between parties relating to private rights or obligations which Civil Courts may take cognizance of may be referred to arbitration, unless a reference if forbidden by a Statute or is opposed to public policy.

Some of the matters which may be referred to arbitration are :

a. Determination of damages in case of breach of contract.

b. Question of validity of marriage or maintenance payable to wife.

c. Question of law or of law and fact in terms of separation between husband and wife.

d. Matters of personal or private rights of the parties, e.g., right to hold the office of a priest in a temple.

e. Disputes regarding compliment and dignity.

f. Time-barred claims

Q. Define Award
Or Q. What do you understand by the term Arbitration?

Award means an arbitral award. It is the final judgement of the arbitratral tribuanl on all matters reffered to it. It is in fact a final adjudication by a tribunal of the parties own choice. It is binding in the same manner as the decision of a Law Court

Q. What are the essentials of an Award?
Essential of a valid award

1. **It must be made in writing**: It may be in such form and expressed in the language agreed upon.
2. **It must follow the agreement and not purport to decide matters not within the agreement**. An award on something outside the agreement is void and if the void part cannot be severed from the rest of the award, the whole award is void.
3. **It must be final and give a decision on all matters referred.** An arbitral tribunal must be careful to see that its award is a final decision on all matters requiring its determination. It is not bound to determine a matter not notified to it as a matter of difference or which is merely a collateral question, though it may be necessary to dispose it of with a view to deciding the main dispute.
4. **It must be certain.** The award must be certain, reasonable and possible of performance so that no reasonable doubt can arise upon the face of it, or as to the nature and extent of the duties imposed by it on the parties. An award that A or B shall do a certain act is void for uncertainty. The Court leans towards the construction that an award is certain. If prima facie the award is good, it is for the defendant to show that it is uncertain.
5. **It must be dated and signed** by the arbitrators and generally at the same time and in the presence of each other.
6. **It must be legal** and must be in conformity with the powers contained in the reference.

Chairman and umpire

Where the tribunal consists of an odd number of arbitrators, one of them may be designated as the umpire or chairman. The selection of title actually carries some significance. When an arbitrator is "chairman", then they will not usually exercise any special or additional powers, and merely have a presidential function as the tribunal member who sets the agenda.[6] Where a member of the tribunal is an umpire, they usually do not exercise any influence on proceedings, unless the other arbitrators are unable to agree — in such cases, then the umpire steps in and makes the decision alone.

Q.Can an Award be modified or corrected? Briefly explain;

Within 14 days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties

a. (i) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award

   (ii) may request the arbitral tribunal to any divisible part of the award which has not been sent to the tribunal or if sent it does not affect the arbitral award on the matters sent to the tribunal.

b. if so- agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction, or give the interpretation as the case may be, within 14 days from the receipt of the request or where the parties agree upon the longer period of time on the request of the arbitral tribunal, within that agreed longer period of time.

The arbitral tribunal may correct any computation errors, any clerical or typographical errors or any other erros of similar nature occuring in the award within 14 days from the date of the arbitral award.

Unless otherwise agreed by the parties, a party with a notice to the other party, may request, within 14 days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

If the arbitral tribunal considers the request made to be justified, it shall make the additional arbitral award within 60 days from the date of receipt of such request.

Q. When the Court can set aside an Award?

Application
Recourse to a Court against an arbitral award may be made only by an application for setting aside such award.

Grounds. An arbitral award may be set aside by the Court only if

(a) the party making the application furnishes proof that

i. a party was under some incapacity; or
ii. the arbitration agreement is not valid under the law; or
iii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case ; or
iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration. However if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties. Such agreement should however be not in conflict with any provision from which the parties cannot derogate ; or
vi. the Court finds that the subject-matter of the dispute is not capable of settle-

ment by arbitration under the law for the time being in force, or

vii. the Court finds that the arbitral award is in conflict with the public policy of Bangladesh.

The Court can also set aside an award on the following grounds :

1. If the arbitrator has misconducted himself.
2. Where lie is guilty of partiality
3. Where he has, or acquires, an interest in the subject-matter unknown to the parties.
4. Where there is legal misconduct on his part.

Law relating to Trusts

Q. Define Trust? Write the various duties of the trustees under the Trust Act, 1882?

Definition of Trust:

A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

- the person who reposes or declares the confidence is called the "author of the trust":
- the person who accepts the confidence is called the "trustee":
- the person for whose benefit the confidence is accepted is called the "beneficiary":
- the subject-matter of the trust is called "trust-property" or "trust-money":
- the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property;
- and the instrument, if any, by which the trust is declared is called the "instrument of trust".
  a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

Duties of the trustees

1. **Trustee to execute trust :** The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.
2. **Trustee to inform himself of state of trust-property:** A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property;
3. **Trustee to protect title to trust-property:** A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.
4. **Trustee not to set up title adverse to beneficiary:** The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.
5. **Care required from trustee:** A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property
6. **Conversion of perishable property:** Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.
7. **Trustee to be impartial:** Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.
8. **Trustee to prevent waste:** Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he

commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

9. **Accounts and information:** A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.
10. **Investment of trust-money:** Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound to invest the money on the following securities :
    - in promissory notes, debentures, stock or other securities
    - in stock or debentures of, or shares in, Companies the interest whereon shall have been guaranteed by the Government:
    - on a first mortgage of immoveable property situate in Bangladesh:
    - on any other security expressly authorised by the instrument of trust, or by any rule which the Supreme Court may from time to time prescribe in this behalf:
11. **Power to purchase redeemable stock at a premium :**A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value

Q. Explain liabilities of a trustees.

Liabilities of the trustees is furnished below:

- **Liability for breach of trust:** Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained,

- **No set-off allowed to trustee:** A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

- **Non-liability for predecessor's default:** Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

- **Non-liability for co-trustee's default:** Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Q. Discuss the classification of Trust.

A conventional statement regarding classification of trusts, a common arrangement of the terms were given by Maitland as follows:

Trust are created

I) By the act of a party

ii) By the operation of law

A further classification has been made

i)By the act of a party

a. Express trusts

Express trusts are, of course, trusts stated fully in language, when the language used is properly construed. There are (a) oral express trusts, and (b) express trusts declared or manifested in writing.

b. Implied trusts

Implied trusts are trusts that the courts imply from the words of an instrument, where no express trust is declared, but such words are used that the court infers or implies that it was the purpose or inten-tion of the parties to create a trust.

ii) By the operation of law

a. Resulting trusts (from the Latin 'resultare' meaning 'to jump back') is the creation of an implied trust by operation of law, as where property gets transferred to one who pays nothing for it; and then is implied to have held the property for benefit of another person. The trust property is said to "result" back to the transferor (implied settlor). In this instance, the word 'result' means "in the result, remains with", or something similar to "revert" except that **in the result** the beneficial interest is held on trust for the settlor.

Creation of Resulting Trust

- Arising out of gifts
- Arising from purchases

b. Constructive trusts: A constructive trust is an equitable remedy resembling a trust imposed by a court to benefit a party that has been wrongfully deprived of its rights due to either a person obtaining or holding legal right to property which they should not possess due to unjust enrichment or interference

Q. He who seeks equity must do equity. - Explain

This maxim is not a moral persuasion but an enforceable Rule of Law. It does not require every plaintiff to have an unblemished background in order to prevail, but the court will refuse to assist anyone whose Cause of Action is founded on his or her own misconduct toward the other party.

If, for example, a wealthy woman tricks her intended spouse into signing a prenuptial agreement giving him a token $500 should they Divorce and after marriage she engages in a consistent pattern of conduct leading to a divorce, a court could refuse to enforce the agreement.

Q. Short notes : Trust Deed

A document that embodies the agreement between a lender and a borrower to transfer an interest in the borrower's land to a neutral third party, a trustee, to secure the payment of a debt by the borrower.

A deed of trust, also called a trust deed or a Potomac Mortgage, is used in some states in place of a mortgage, a transfer of interest in land by a mortgagor-borrower to a mortgagee-lender to secure the payment of the borrower's debt. Although a deed of trust serves the same purpose as a type of security, it differs from a mortgage. A deed of trust is an arrangement among three parties: the borrower, the lender, and an impartial trustee. In exchange for a loan of money from the lender, the borrower places legal title to real property in the hands of the trustee who holds it for the benefit of the lender, named in the deed as the beneficiary. The borrower retains equitable title to, and possession of, the property.

The terms of the deed provide that the transfer of legal title to the trustee will be void on the timely payment of the debt. If the borrower defaults in the payment of the debt, the trustee is empowered by the deed to sell the property and pay the lender the proceeds to satisfy the debt. Any surplus will be returned to the borrower.

Law relating to Negotiable Instruments

Q. Define a Negotiable Instrument.

Negotiable' means transferable by delivery and 'Instrument' means a written document by which a right is created in favor of some person. The term 'negotiable instrument' literally means 'a document transferable by delivery.

According to Negotiable Instrument Act of 1881, Negotiable Instrument as -"Negotiable Instrument means promissory Note, Bill of Exchange or Cheque payable either to order or to bearer." From the definition it appears that in Bangladesh only three kinds of instruments are recognised in the Act as negotiable instruments, namely

- promissory notes,
- Bills of Exchange and
- cheques.

Despite some documents such As Hundi, Bill of Lading, Dividend Warrant, etc., have also been accepted as Negotiable Instruments.

Q. What are its characteristics?
Or Q. State the essential features or characteristics of a negotiable instrument.

- ***Writing and Signature***. Negotiable instruments must be written and signed by the parties according to the rules relating to Promissory Notes, Bills of Exchange and Cheques.
- ***Money.*** Negotiable instruments are payable by legal tender money of Bangladesh. The liabilities of the parties of negotiable instruments are fixed and determined in terms of legal tender money.
- ***Negotiability.*** Negotiable instruments can be transferred from one person to another by a simple process. In case of bearer instrument, delivery to the transferee is sufficient. In case of order instruments two things are required for a valid transfer: indorsement and delivery. An indorsement may be made non-transferable by using suitable words like, 'pay to X only.'
- ***Title***. The transferee of a negotiable instrument, when he fulfills certain conditions, is called the holder in due course. The holder in due course gets a good title to the instrument even in case s where the title of the transferor is defective.
- ***Notice***. 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.
- ***Presumptions***. Certain presumptions apply to all negotiable instruments. Example, it is presumed that there is consideration. It is not necessary to write in a promissory note the words 'for value received' or similar expression because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.
- ***Special procedure***. A special procedure is provided for suits on promissory notes and bills of exchange
- ***Evidence***. A document which fails to qualify as a negotiable instrument may nevertheless be used as evidence of the fact of indebtedness.

Q. What is the effect of crossing a cheque with the words " Not negotiable" written across its face?

A cheque bearing words "not negotiable" can be transferred or assigned by the payee. The transferee will get the same rights as regards payment, as the transferor had. But the transferee will not get the same of holder in due course. Section 130 in this has provided that "A person taking a cheque crossed generally or specially, bearing in either case the words not negotiable, shall not have, and shall not be .capable of giving a better title to the cheque than that which the person from whom he took it had." From this it follows that the transferee of such a cheque takes it at his risk. Section 125 provides as follows (regarding crossing after issue) :

- 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 or specially, the holder may add the words "not negotiable."
- Where a cheque is crossed specially the banker to Whom it is dossed specially may again cross it specially to another Banker, his agent, for collection.

Q. What is the purpose of crossing a cheque? State the various ways in which a cheque can be crossed?

A crossed cheque is one in which two short parallel lines are drawn across its face. This. type of cheque can only be cashed through a bank of which the payee of the cheque is a customer. It cannot be cashed at the counter of the drawee bank. The advantage of crossing is that the cheque cannot be stolen or misused since the amount of the cheque is paid only through the bank of the payee.

Modes of crossing a cheque.

There are different modes of crossing a cheque.

General Crossing

When a cheque is crossed by drawing two parallel lines across the face of the cheque, it is called **general crossing**. A cheque of general crossing is paid to any bank through which it is presented. Under section 123 a cheque crossed generally has been defined as follows — Where a cheque bears a cross on its face in addition to the words and company or any abbreviation thereof, between two parallel transverse lines or of two parallel transverse lines simply, either with or without the words not negotiable that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally."

Special crossing

When the name of the bank is written between parallel lines, it is called **special crossing.** A cheque of special crossing will be paid only when this cheque is presented by the bank named between the parallel ·lines. This type of crossing provides a substantial measure of protection against loss. Section 124 of the Negotiable Instrument Act defines a specially crossed cheque as fellows— "Where a cheque bears a cross on its face in addition to the name of a bank, either with or without the words' not negotiable, that addition shall be deemed a crossing, and that shall be deemed to be crossed specially, and to be crossed to that banker."

Besides general or special crossing, a cheque may be various remarks written on it. The effect of such remarks is to restrict payment in certain ways. These remarks are " Account Payee" and "Not negeotiable" "Account payee only." The words account payee" on a cheque is interpreted as a direction on the banker to credit the amount of the cheque to the account of the payee. Such a cheque is transferable because its negotiation is not prohibited. The usual principle about negotiable instruments is that if the cheque is negotiable in its origin, the words "Account payee only" prohibiting transfer or indicating an intention of not to transfer will not defeat the transferability or negotiability of the cheque.

Q. True/ False Post dated cheque is a valid negotiable instrument.

True, In post dated cheque, the date of the cheque is a future date. As per Negotiable Instruments Act, 1881 a cheque is not invalid if it is post dated or ante dated.

Q. Explain who is a "Holder in due course." State the rights and liabilities of a 'Holder in due course' under the Negotiable Instrument Act. Or What do you mean by Holder in Due Course?

Under section 9 of the Negotiable Instrument Act Holder In Due Course' has been defined as follows— "Holder in due course means any person who, for consideration, became the possessor of a promissory note, bill of exchange or cheque, if payable to bearer, or the payee or endorsee thereof, if payable to order before. the amount mentioned in it becomes payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."

From the definition it appears that the" holder in due course' must fulfil the following conditions-

i) he obtains the possession of the instrument in return for a valuable consideration,

ii) he is to have possession of the instrument payable to bearer,

iii) the payee or indorsee will be considered as 'holder in due course' in the case of instrument payable to order

iv) the indorsee obtains the possession of the instrument before its maturity i.e. before the amount mentioned in the instrument became payable,

v) he had no cause to believe that any defect existed in the title of the person from whom he derived his title.

Rights and liabilities of a Holder in Due Course:

Under the Negotiable Instrument Act the Holder in Due Course has the following rights and liabilities :

1. He gets a good title to the instrument despite the fact that the transferor's title was defective section 48.
2. Under section 20 it is stated that he (holder in due course) get a good title despite the instrument has originally an inchoate instrument (stamped) and the transferor completed the instrument for a sum greater than what was intended by the maker.
3. He can make liable the prior parties after obtaining the conditional instrument, but other holders cannot do it. It is because the ownership of a conditional instrument cannot be negotiable. Sections 46 & 47.
4. He can file a suit in his own name, against the parties liable to pay the amount of the instrument.
5. All the prior parties to the instrument remain liable to the holder in due course until the amount due in the instrument is paid. Section 36.

6. The acceptor of a bill of exchange which is written in a fictitious name and is payable according to the order of the drawer is liable to pay to the holder in due course if the signatures of the drawer of the fictitious bill and his first or only endorser are same. Section 42.
7. Under section 121 it has been laid down that the maker of a promisory note and no acceptor of a bill payable to order shall be permitted to deny the payee's capacity, at the date of the note or bill to endorse the same if the holder in due course has filed a suit thereon.

Q. Shafiq signed a document in these terms. - "in consideration of the loan of Tk.50,000 from Rafiq, shafiq agrees to repay Rafiq the sum of Tk.50,000on or before July 31, 2012." Is the document a valid promissory note?

Q. What is a Bill of Exchange?
or Who can accept a Bill of Exchange?
or Who is the Drawee in case of need?

Section 5 of the Negotiable Instrument Act defines a Bill of Exchange in the following way-"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."

Drawer —The maker of a Bill of Exchange is called drawer.

Drawee— Drawee is a person who is directed to pay.

Payee - Payee is a person who receives the money.

Holder — Payee having the custody of the Bill is called Bolder.

Acceptor—When the drawee signifies his acceptance by signing on the bill presented to him by the Holder for acceptance, is called the Acceptor.

When the original drawee does not accept the bill, then another person whose name is mentioned in the bill accepts it and, therefore, he is called Drawee in case of need.

Q. State the principal features of Bill of Exchange./ essential elements of Bill of Exchange?

The following are the characteristics (essentials) of the Bill of Exchange. These essentials are required to be fulfilled for the instrument to be valid.

- The instrument must be in writing.
- The instrument must be signed by the drawer.
- The instrument must contain an order to pay, which is express and unconditional.
- The drawer, drawee and the payee must be certain and definite individuals.
- The amount of money to be must be certain.
- The payment must be in the legal tender money.
- The money must be payable to a definite person or according to his order.
- A bill of exchange must be properly stamped.
- The bill may be made payable on demand or after a definite period of time

Q. Show the distinction between Bill of Exchange and Cheque.

Promissory note	Bill of Change
It is a promise to pay.	It is an order to pay.
There are two parties ie. the maker and the payee.	Primarily there are 3 parties ie. the drawer, the drawee and the payee.
There is no need to present it for acceptance.	A bill of exchange not drawn payable on demand or on presentation or at sight is required to be presented for acceptance.
The liability of the maker is primThe liability of The liability of the maker is primary.	The liability of the drawer or maker is secondary
A promissory note is not drawn in sets	A bill of exchange may be drawn in sets
A promissory note cannot be made payable to the maker himself.	A bill of exchange can be made payable to self

Q. Show the distinction between Bill of Exchange and Cheque.

Bill of Change	Cheque
A bill of exchange is drawn on any Person, firm, company and organization, private or public.	A cheque can only be drawn on a bank
Three days of grace are allowed to the drawee.	A cheque is payable on demand.
A bill of exchange payable after sight requires acceptance.	There is no question of acceptance.
Bankers do not get any protection in case of a crossed bill of exchange	Bankers get statutory protection in case of a crossed cheque
The drawer has no right o countermand	The drawer can do so at his sweet will
An usance bill should be stamped according to the stamp Act.	There is no need to stamp a cheque in our country

Q. What punishment is prescribed for dishonor of a cheque for insufficiency of fund in the account? What conditions need to be observed before filing a compliant under the Negotiable Instrument Act?

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to thrice the amount of the cheque, or with both:

Notwithstanding anything contained in sub- section (1) and (2), the holder of the cheque shall retain his right to establish his claim through civil Court if whole or any part of the value of the cheque remains unrealized. Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within thirty days of the receipt of the said notice.

1A The notice required to be served under clasue (b) of sub-section (1) shall be served in the following manner-

(a) by delivering it to the person on whom it is to be served; or

(b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or

(c) by publication in a daily Bangla national newspaper having wide circulation.

(2) Where any fine is realized under sub-section (1), any amount upto the face value of the cheque as far as is covered by the fine realized shall be paid to the holder.

(3) Notwithstanding anything contained in sub- section (1) and (2), the holder of the cheque shall retain his right to establish his claim through civil Court if whole or any part of the value of the cheque remains unrealized.

Q. T/F Any material alteration of a negotiable instrument renders the same void

Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee
Alteration by indorsee and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Acceptor or indorser bound notwithstanding previous alteration
An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent

Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reasoned of the instrument having been altered or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands

The maker, drawer, acceptor or indorser of a negotiable instrument is discharged from liability thereon when the person liable thereon as principal debtor becomes the holder thereof at or after its maturity.

When the holder of an accepted bill of exchange enters into any contract with the acceptor of the nature referred to in section 39, the other parties are discharged, unless the holder has expressly reserved his right to charge them.

Q. What is a Promissory note? What are the essential elements of Promissory Note.

Negotiable Instrument Act, 1881 has defined promissory note as "An instrument in writing (not being a Bank Note or a Currency Note) containing an unconditional undertaking, signed by the maker, to pay a certain some of money only to or to the order of a certain person, or the bearer of the instrument." There are two parties in a promissory note, namely promisor and promisee. Promisor is one who makes the promissory note. The promisee is one who receives the money mentioned in the promissory note.

The following are the essential elements of Promissory Note :

- The instrument must be in ***writing.***
- The instrument must be ***signed by the maker*** of it. A signature in pencil or by a rubber stamp of facsimile is good. An illiterate person may use a mark or cross instead of writing out his name. The mark or signature may be placed anywhere on the instrument, not necessarily at the bottom. It may be at he top or at the back of the instrument.
- The instrument must contain ***a promise*** to pay. The promise to pay must be express. It can not be implied or inferred. A mere acknowledgement of indebtedness is not enough.
- The promise must be ***unconditional***. If the promise to pay is coupled with a condition it is not a promissory note.
- The maker of the instrument must be ***certain and definite***.
- A promissory note must be stamped according to the Stamp Act.
- The sum of ***money*** *to* be paid must be ***certain***
- The payment must be in the ***legal tender money***. A promise to pay certain quantity of goods or certain amount of foreign money is not a promissory note.
- The money must be payable ***to a definite person*** or according ***to his order***. A note is valid even if the payee is misnamed or is indicate d by his official designation only.
- The promissory note may be ***payable on demand*** or after certain definite period of time.

Q. State the rights and liabilities of the parties to the Negotiable Instrument?

Rights of the parties to the Negotiable Instrument

Regarding capacity of the parties to the Negotiable Instrument section 26 of the Act provides that "every person capable of contracting according to the law to which he is subject may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. The various rules or provisions of the law regarding the different cases of incapacity of the different parties to the negotiable instruments are discussed below:

1. Section 26 provides that "A minor may draw, endorse, deliver and negotiable such instrument so as to bind all parties except himself"
2. The position of lunatic, idiot and drunken persons as parties to the negotiable instruments is same like that a minor under the law.
3. If a person is adjudicated, i.e. if a person is declared insolvent by the court, then his (insolvent) properties are put in the custody of the official Assignee. He (insolvent) therefore, cannot draw, make, accept or endorse a negotiable instrument.
4. Under section 26 of the Act, it has been stated that a corporation can be party to the negotiable instrument
5. Section 27 provides that "every person capable of binding himself or of being bound, by a negotiable instrument, may so bind himself or be bound by a duly authorized agent acting in his name."
6. An agent when signing a negotiable instrument must clearly indicate that he signs it (instrument) as an agent.
7. Under section 29 of the act it has been laid down that a legal representative of a deceased person who signs his name to a negotiable instrument must use words to indicate that he is not personally liable. If he does not use any such words, he becomes personally responsible."
8. The karta of a Joint Hindu Family can bind the family by performing a negotiable instrument, the condition being that the transaction is for the interest or legal necessity of the family.
9. If a country is at war with another country, then there cannot be any transaction relating to bill of exchange or promissory note between the citizens of these two countries.

Liability of the Parties to Negotiable Instruments.

The rules that have been provided under the Negotiable Instrument Act regarding the liability of the parties (Maker, Acceptor, Drawer, Endorser) to a negotiable instrument are discussed as under :

Maker and Acceptor : section 32 of the Act states that "in the absence of a contract to the contrary, the maker of a promissory note and acceptor of a bill of exchange before maturity are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively.

Drawer: In respect of this section 30 of the Act provides that—'The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawer or acceptor thereof, to compensate the holder, provided due notice of dishonour has funds of the drawer, in his hands, properly applicable to the payment of cash cheque must pay the cheque when duly required to do so, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default."

(4) Endorser—Regarding endorser Section 35 provides as follows— "the endorser of a negotiable instrument is liable to all subsequent parties in case of dishonour of the instrument, provided

- there is no contract to the contrary,
- the endorser had not limited or qualified his liability by using appropriate words and expressions for the purpose, and
- due notice of dishonour had been given to or received by, such endorser as hereinafter provided." However if the holder of the instrument without the permission from the endorser destroys his (latter) right of getting damage from any prior party, in that case the endorser, will be relieved of his liabilities to the holder of the instrument. Section 40.

General Rules Regarding Liability of the parties.

The general rules as provided in the sections 36-38 regarding the liability of the different parties of the negotiable instruments are highlighted as under :

- "Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied". Section 36.
- "The maker of promissory note or cheque, the drawer of a bill or cheque until acceptance, and the acceptor, in the absence of a contract to the contrary, respectively are liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer and acceptor as the case may be." Section 37
- "As between the parties so liable as sureties, each prior party, is in the absence of a contract to the contrary also liable thereon as a principal debtor in respect of each subsequent party." Section 38.

Q. Short notes

Cheque and Promissory note

Cheque

- A cheque is a bill of exchange drawn upon a specified banker and payable on demand. sec. 6
- Essential features of Cheque
- A cheque must fulfill all the essential requirements of a bill of exchange.
- A cheque may be payable to a bearer or to order but in either case it must be payable on demand.
- The banker named must pay it when it is presented for payment to him at his during the usual office hours provided the cheque is validly drawn and the drawer
- Bill and notes may be written entirely by hand. There is no legal bar to cheques being hand-written. Usually, however, banks provide their customers with printed cheque forms which are filled up and signed by the drawer.
- The signature must tally with the specimen signature of the drawer kept in the bank.
- A cheque must be dated. A banker is entitled to refuse to pay a cheque which is not dated. A cheque becomes due for payment on the date specified on it.
- A cheque drawn with a future date is valid but it is payable on and after the date specified. Such cheques are called post-dated cheques.

- A cheque may be presented for payment after the due date but if there is too much delay the bank is entitled to consider the circumstances suspicious and refuse to honor the cheque. The period after which a cheque is considered too old or stale is usually six months.
- In some certain circumstances the bank is not bound to pay the cheque.

Promissory Note

- A promissory note is an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain some of money only to, or to order of a certain person, or the bearer of the instrument. Sec. 4.
- The person who makes the promise is called the ***maker.*** He is the debtor and must sign the instrument. The person who will get the money is called the ***payee.***

Endorsement;

A legal term that refers to the signing of a document which allows for the legal transfer of a negotiable from one party to another. An attachment to a document that amends or adds to it. Typically, it is an added provision to an insurance policy. Also referred to as a "rider".

When an employer signs a check, they are endorsing the transfer of money from the business accounts to the account of the employee. If an insurance contract has a provision stating that in the event of the policy holder's death the family of the policy holder will continue to receive the policy holder's monthly income for a period of time, this is an example of an endorsement or a rider. Endorsements and riders cause the price of the premium to rise as they provide a positive benefit.

Fictitious Bill

A bill in which the drawer or the payee or both are non existent. In such case the drawee or the acceptor is liable to pay the due amount to the holder in due course. The onus to prove that the drawer is fake lies on the endorsee. He can prove it by proving that the signature of drawer and first endorser are the same.

Cheque crossed generally and cheque crossed specially

Cheque crossed generally

A 'crossed cheque' is a cheque restricted in use by means of special endorsements. A general crossed cheque has two parallel diagonal lines across the face and may also be endorsed «& Co.»
The bank on which a crossed cheque is drawn may only pay it to one of its customers or to a bank.

Cheque crossed specially

A special crossed cheque bears the name of a bank between the parallel lines, denoting that it may only be paid to the designated bank.

If the bank on which the cheque is drawn is itself the designated bank, then the cheque may be paid to one of its customers.

A general crossed cheque may be converted into a special crossed cheque, but not vice versa.

Law relating to contract

Essential elements of Contract

Q. Define law of contract?
Or Q. Define contract

A contract is an agreement made between two or more parties which the Law will enforce.

According to Pollock's
"Every agreement and promise enforceable at Law is a contract"

According to Salmond, a contract is
"an agreement creating and defining obligations between the parties"

Q. Explain elaborately the different elements of a contract.

In order to become a contract, an agreement must have the following essential elements:

1. **Offer and acceptance:** There must be two parties to an agreement, i.e., one party making the offer and other party accepting it. The terms of the offer must be absolute and unconditional.
2. **Intention to create legal relationship:** when the tow parties enter into an agreement, their intention must be create legal relationship.
3. **Capacity of parties:** competency: Every person is competent to contract if he
    - is of the age of majority
    - is of sound mind, and
    - is not disqualified from contracting by and law to which he is subject
4. **Free and genuine consent:** It is essential to the creation of every contract that there must be a free and genuine consent of the parties to the agreement. The consent of the parties is said to be free when they are of the same mine on all the material terms of contract.
5. **Lawful object:** The object must not be (a) illegal (b) immoral or (c) opposed to public policy.
6. **Agreement not declared void:** The agreement must not have been expressly declared void by any law in force in the country.
7. **Certainty and possibility of performance:** The agreement must be certain and not vague or infinite.
8. **Legal formalities:** A contract may be made by words spoken or written. In the interest of the parties that the contract should be in writing. Writing is required in case of lease, gift, sale and mortgage of immovable property, negotiable instruments, memorandum and article of association etc. Registration is compulsory in case of documents coming within the purview of section 17 of the Registration Act e.g. Mortgage deeds covering immovable property. Thus where there is a statutory requirement that a contract should be made in writing or in the presence of witness or registered, the required statutory formalities must be complied with.

Q. Void and voidable agreement or contract?

Void contracts
An agreement not enforceable by law is said to be void and it has no legal status. It confers no rights on any person and creates no obligations. For example;

- An agreement made by a minor
- Agreement without consideration
- Agreement against public policy

Voidable contract
An agreement which is enforceable by law at the option on one party to the contract is a voidable contract. It can be avoided, set aside by the party. Until it is avoided it is a good contract. This happens when the essential element of free consent in a contract is missing. When the consent of a party to a contract is not free, i.e. it is caused by coercion, undue influence, misrepresentation or fraud, the contract is voidable at his option.

Case. X coerces (to force to act) Y into entering into a contract for the sale of Y's house to X. This contract can be avoided by Y. X cannot enforce the contract.

Q. What are the different types of contracts? or Classification of Contract?

Contract may be classified according to their

- validity
- formation
- performance
- The parties of the contract

Classification according to validity
An agreement becomes a contract when all the essential elements of the contract are present. If one or more of these elements is/are missing, the contract is either

- **Voidable contract:** This happens when the essential elements of free consent in a contract is missing.
- **Void contract:** An agreement not enforceable by law is said to be void.
  - An agreement made by a minor
  - Agreement without consideration
  - Certain agreement against public policy etc.
- **illegal agreement:** An illegal agreement is one which is against a law enforce in Bangladesh
- **unforceable agreement:** An agreement which cannot be enforced in a court of law, one or both of the parties, because of some technical defect.
  - Want of registration
  - non-payment of the requisite stamp duty

Classification according to formation

- **Express contract:** which is expressed in words, spoken or written
- **Implied contract:** The condition of an implied contract is to be understood from the acts, the conduct of the parties and/ or the course of dealing between them.
- **Quasi contract:** It resembles a contract in that a legal obligation is imposed on a party who is required to perform it.

Classification according to performance

- **Executed contracts:** An executive contract is one in which both the parties have performed their respective obligation.
- **Executory contract:** An executory contract is one in which both the parties have yet to perform their obligation.

Classification according the parties of the contract

- **Bilateral Contracts:** There must be at least two parties to the contract.
- **Unilateral Contract:** In certain contracts one party has to fulfill his obligations where as the other party has already performed his obligations.

Q. "All contracts are agreements but all agreements are not contracts"-Explain or Q. An agreement enforceable by law is a contract.

Every agreement and promise enforceable at law is a contract. If we analyze the definitions of contract we find that a contract essentially consists of two elements:

- an agreements, and
- its enforceability by law

An agreement is defined as "every promise and every set of promises forming consideration for each other." A promise is defined thus: when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. This, in other words, means that an agreement is an accepted proposal. In order, therefore to form an agreement there must be a proposal or offer by one party and its acceptance by the other. To sum up:

Agreement = Offer + Acceptance

The essence of an agreement is the meeting of the minds of the parties in full and final agreement: there must, if fact, be consensus ad idem.

Example: A, who own tow cars named Corrola X and Corrola Y, in selling car Corrola X to B. B thinks he is purchasing car Corrola Y. There is no consensus ad idem and consequently no contract.

An agreement to become a contract, must give rise to a legal obligation or duty. The term 'obligation is defined as a legal tie which imposes upon a definite person or persons the necessity of doing or abstaining from doing a definite act or acts.

An agreement may be a social agreement or a legal agreement. If A invites B to a dinner and B accepts the invitation, it is a social agreement does not give rise to contractual obligations and is not enforceable in a court of Law. It is only those agreements which are enforceable in a court of Law which are contracts.

To conclude

Contract = Agreement + Enforceability at law

Thus all contracts are agreements but all agreement are not necessarily contracts.

Quasi contract

A quasi-contract is not a contract alt all. A contract is intentionally entered into by the parties. A quasi contract on the other hand, is created by law. It resemble a contract in that a legal obligation is imposed on a party who is required to perform it. It rests on the ground of equity that " a person shall not be allowed to enrich himself unjustly at the expense of another."

Example: T, a tradesman, leaves goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods.

Implied contract

An implied contract is one which is inferred from the acts or conduct of the parties or course of dealing between that. It is not the result of any express promise or promises by the parties but of their particular acts. It may also result from a continuing course of conduct of the parties where the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied.

Q. A contract to contract is not a contract.

Q. Difference between illegal contract and immoral contract.

Illegal contract: An agreement which is against the law is illegal agreement. Say agreement to commit murder, robbery etc. This type of agreement is said to be illegal and of course void (because all illegal agreement are void) and has no legal status, It confers no rights on any person and creates no obligations.

Immoral contract: An agreement which is against the morality is illegal agreement.

Q. A, a famous artist, promised to paint a picture for B by a certain day on payment of Tk.50,000/-. Unfortunately A died before the day. Can this contract be enforced by A's representative or by B?

Q.Can "A" recover the amount promised to him by "B" in the following cases:

i. **B has promised to pay A Tk.10,000 for his horse which had died before the contract.**
ii. **C, a minor, promised to pay D Tk.20,000 for his car.**
iii. **E promised to pay his son E Tk.50,000 if he would not marry J.**

Offer and Acceptance

Q. A counter offer can constitute an acceptance of an offer.

The acceptance of a proposal must 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.

According to the Contract Act, an acceptance with a variation is no acceptance; it is simply a counter-proposal, which must be accepted by the original promisor before a contract is made.

Example: X offered to sell his house for Tk.200,000/-. Y said "accepted for Tk.150,000/-". This is not an acceptance but a counter offer or counter proposal.

Q. "An offer may be expressed or may be implied from the circumstances"- Explain

An offer may be made in two ways: (I) by words, spoken or written and (ii) by conduct. When an offer is made by stating so in words or in writing, it is called an Express offer. When an offer is implied from the conduct of a person, it is called an Implied offer

Example:
X offers to sell his motor car to Y at the price of Tk. 5 lac. This is a proposal. X is the promisor or the offeror. Y is the offeree. If Y agrees to buy the car at the price stated; Y becomes the promisee or the acceptor. There is a contract.

Again;
P puts up a notice offering to pay a reward of Tk.1000 to any student who finds out and returns a book lost in the college. Q a student, reads the notice and then finds and brings the book to P. P's notice is an offer and Q is the acceptor. There is a contract.

According to section : 9, In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Q. When is an offer completed?
Or When does an offer come to an end?
Or How and when may an offer be revoked?
Or When is an offer completed

An offer may come to an end by revocation or lapse, or rejection. Section 6 of contract Act deals with various modes of revocation of offer. According to it, an offer is revoked-

1. By communication of notice of revocation by the offeror at any time before its acceptance is complete as against him.
2. By lapse of time if it is not accepted within the prescribed time
3. By non-fulfilment by the offeree of a condition precedent to acceptance
4. By death or insanity of the offeror provided the offeree comes to know of it before acceptance
5. If a counter-offer is made to it
6. If an offer is not accepted according to the prescribed or usual made, provided the offeror gives notice to the offeree within a reasonable time that the acceptance is not according to the prescribed or usual mode
7. If the law is changed.

An offer can, however. be revoked subject to the following rules

1. It can be revoked at any time before its acceptance is complete as against the offeror.
2. Revocation takes effect only when it is communicated to the offeree.
3. If the offeror has agreed to keep his offer open fora certain period, he can revoke it before the expiration of that period only-
    - if the offer has in the meantime not been accepted or
    - If there is no consideration for keeping the offer open

Q. What is an acceptance?

Acceptance is the act of assenting by the offeree to an offer. In other words, it is the manifestation by the offeree of his willingness to be bound by the terms of the offer. This means when the offeree signifies his assent to the offeror, the offer is said to be accepted.

Q. What are the legal requirements of a valid acceptance

The acceptance of an offer is the very essence of a contract. To he legally effective. it must satisfy the following conditions :

1. **It must be absolute and unqualified**: it must conform with the offer. An acceptance, In order to be binding, must be absolute anti unqualified in respect of all terms of the offer.
2. **It must be communicated to the offeror:** To conclude a contract between the parties: the**-**acceptance must be communicated in some perceptible form.
3. **It must be according to the mode prescribed or usual and reasonable mode:** If the acceptance is not according to the mode prescribed, or some usual and reasonable mode the offeror may intimate to the offeree within a reasonable time that the acceptance is not according to the mode prescribed and may insist that the offer must be accepted in the prescribed mode only.
4. **It must be given within a reasonable time:** If any time limit is specified, the acceptance must be given within that time.
5. **It cannot precedes an offer:** If the acceptance precedes an offer, it is not a valid acceptance and does not result in a contract.
6. **It must show an intention on the part of the acceptor to fulfill terms of the promise.** If no such intention is present, the acceptance is not valid.
7. **It must be given by the party or parties to whom the offer is made.**
8. **It cannot be implied from silence**

Q. "A mere statement of intention is not an offer- Do you agree, if so, explain.

A declaration by a person that he intends to do something, gives no right of action to another. Such a declaration only means that an offer will be made or invited in future and not that an offer is made now. A distinction is usually made, between an 'Offer' and 'a statement of intention'. Price list and catalogues, and enquires for customers are merely statements of intention. They are not regarded as offers but as invitation to others to made offers. An advertisement in a newspaper or elsewhere may be so worded that it amounts to an offer. But ordinarily and advertisement is considered to be an invitation to make offers. Similarly, in an auction sale, articles are displayed with an intention that the bidders present may bid for them i.e. may make an offer. Thus in an auction sale a bid is an offer while the fall of the hammer signifies the acceptance of the auctioner.

Consideration

Q. What do you mean by consideration?

Consideration is an essential element in a contract. Subject to certain exceptions, an agreement is not enforceable unless each party to the agreement get something. This "something" is called consideration. It is used in the sense of "something in return."

According to Contract Act:
"When, at the desire of the promisor, the promise 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."

Example:
P agrees to sell a house to Q for Tk.5,00,000/-. For P's promise, the consideration is Tk.5,00,000/-. For Q's promise, the consideration is the house.

Q. "Past consideration is no consideration" Comment

According to the legal rules of consideration, it may be past, present or future.

When consideration by a party for a present promise was given in the past, i.e. before the date of the promise, it is said to be past consideration

Example: A renders some service to B at latter's desire. After a month B promises to compensate A for the services rendered to him. It is past consideration. A can recover the promised amount.

Q. "No Consideration, no contract". State the exceptions to the rule

Or State the circumstances in which a contract without consideration treated as valid;

or Describe with examples the agreements which can be valid without consideration.

Or

Q. "An agreement without consideration is void unless it is in writing and registered" Explain

Consideration is essential for the validity of a contract. Subject to certain exceptions, an agreement is not enforceable unless each party to the agreement get something. This "something" is called consideration. It is used in the sense of "something in return." A promise without consideration is gratuitous undertaking and cannot create a legal obligation

Exceptions:
There are exceptional cases where a contract is enforceable even though there is no consideration:

1. **Natural love and affection:** A written and registered agreement based on natural love and affection between near relatives is enforceable even if it is without consideration.

   Example: F, for natural love and affection, promises to give his son, S, Tk.1000. F, puts his promise to S in writing and registers it. This is a contract.

2. **Voluntary Compensation:** A promise to pay for a past voluntary service is binding.

   Example: A finds B's purse and gives it to him. B promises to give a A Tk. 1000. This is a contract.

3. **Promise to pay time-barred debt:** A promise by a debtor to pay a time-barred debt is enforceable provided it is made in writing and is signed by the debtor or by his agent.

   Example: D owes C Tk.1000 but the debt is barred by the Limitation Act. D signs a written promise to pay C Tk.500 on account of the debt. This is a contract.

4. **Agency:** No consideration is necessary to create an agency.

5. **Completed gift:** The rule "No consideration, no contract" does not apply to completed gifts.

6. **Charitable subscription** where the promise on the strength of the promise makes commitments.

Q. Critically discuss the essential elements of consideration?

Consideration means "something in return". The law simply provides that a contract should be supported by consideration. The essential elements of consideration are discussed below:

1. **Desire/ request of the promisor:** An act done without any request is a voluntary act and does not come within the definition of consideration.

   Example: P sees Q's house on fire and helps in extinguishing it. Q did not ask for his help. P cannot demand payment for his services.

2. **The consideration must be real and not illusory:** The Illusory consideration, impossible acts, no consideration and illusory or non-existing goods cannot support a contract.

   Example: X promises to supply Y one tola of gold brought from the sun, The consideration is sham and illusory and there is no contract.

3. **Consideration need not be adequate:** An agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.

   Example: P agrees to sell a horse worth Tk. 1,00,000/- for Tk.1000. P's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

4. **Consideration may move from the promisee or any other person:** A stranger to the consideration can sue to enforce the contract, though a stranger to the contract cannot. A person granted some properties to his wife C directing her at the same time to pay an annual allowance to his brother R. C also entered into an agreement with R promising to pay the allowance to R. This agreement can be enforced by R even though no part of the consideration received by C moved from R.

5. **It may be an act, abstinence or forbearance or a return promise**

6. **The consideration may be present, past or future.**

7. **It must be something which the promisor is not already bound to do**

8. **The consideration must not be illegal, immoral or opposed to public policy:** If either the consideration of the object of the agreement is illegal, immoral or opposed to public policy, the agreement cannot be enforced.

Q. Can a person who is not a party to a contract sue upon it?
Or Under what circumstances can a person who is not party to contract sue upon it?

A stranger to the consideration can sue to enforce the contract, though a stranger to the contract cannot. 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.

1. A person granted some properties to his wife C directing her at the same time to pay an annual allowance to his brother R. C also entered into an agreement with R promising to pay the allowance to R. This agreement can be enforced by R even though no part of the consideration received by C moved from R.

2. 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.

Q. A promise against a promise is a good consideration

As per legal rule of consideration, it may move from the promisee or any other person. Under the English Law, consideration must move from the promisee. Under the Indian Law, consideration may move from the promisee or any other person, i.e. even a stranger. This means that as long as there is consideration for a promise it is immaterial who has furnished it.

Example: An old lady, by a deed of gift, made over certain property to her daughter D, under the direction that she should pay her aunt, P (sister of the old lady), a certain sum of money annually. The same day D entered into an agreement with P to pay her the agreed amount. Later, D refused to pay the amount on the plea that no consideration had moved from P to D. Held, P was entitled to maintain suit as consideration have moved from the old lady, sister of P, to the daughter, D.

Capacity of Parties

Minor and Major

According to law a minor is one who has not completed his or her 18th year of age. So a person becomes a major after the completion of 18th year of life.

An agreement by a minor is absolutely void and inoperative. The reason is that a minor is supported to be incapable of judging what is good for him. His mental faculties are not mature and therefore the law protects him.

Q. True/ False "An agreement entered into with a minor may ratified on his attaining the age of majority."

False. An agreement entered into with a minor cannot be ratified on his attaining the age of majority. The reason is that a void agreement cannot be validated by any subsequent action and a minor's agreement is void. Consideration which passed under the earlier contract cannot be implied into the contract which the minor enters on attaining majority. Thus consideration given during minority is no consideration. If it is necessary a fresh contract may be entered into by the minor on attaining majority provided it is supported by fresh consideration.

Example: M, a minor, borrows Tk. 5000 form L and executes a promissory note in favor of L. After attaining majority, he executes another promissory note in settlement of the first note. The second promissory note is void for want of consideration.

Q. A minor is always allowed to plead minority- Explain

An agreement by a minor is absolutely void and inoperative. Even if he has, by misrepresenting his age, induced the other party to contract with him, he cannot be sued either in contract or in tort for fraud because if the injuried party were allowed to sue for fraud, it would be giving him an indirect means of enforcing the void agreement.

Example: S, a minor, by fraudulently representing himself to be of full age, induced L to lend him Tk. 4000. He refused to repay it and L sued him for the money. Held, the contract was void and S was not liable to repay the amount.

Q. A minor borrowed Tk. 10,000 from Mrs. Salina on a fraudulent representation that he was a major and he spent it. Can Mrs. Salina sue him for the return of the amount.

An agreement by a minor is absolutely void and inoperative. The reason is that a minor is supported to be incapable of judging what is good for him. His mental faculties are not mature and therefore the law protects him.

From the problem, A minor borrowed Tk. 10,000 from Mrs. Salina on a fraudulent representation that he was a major and he spent it. Mrs. Salina can not sue him for the return of the amount as the contract was void and the minor was not liable to repay the amount.

Free Consent

Short notes on Free consent

An agreement is valid only when it is the result of the Free consent of all the parties to it. Section 13 of the Act defines the meaning of the term 'consent' and section 14 under what circumstances consent is 'free'.

Section 13: "Two or more persons are said to consent when they agree upon the same thing in the same sense."

Consent involves a union of the wills and an accord in the minds of the parities. When the parties agree upon the same in the same sense, they have consensus ad item. For a valid contract the parties must be ad item.

Section 14: This section lays down that consent is not free if it is caused by (1) coercion, (2) undue influence, (3) fraud, (4) misrepresentation or (5) mistake

Short notes on Fraud and misrepresentation

Fraud

The term "fraud" includes all acts committed by a person with a view to deceive another person. Fraud is always done Intentionally with having malicious intent.

Section 17 of the Contract Act states that "Fraud" means and includes any of the following acts:

False statement: A false statement intentionally made is fraud.

Active Concealment: Active concealment is fraud

Intentional Non-Performance: Example: Purchase of goods without any intention of paying for them.

Deception: Any other act fitted to deceive.

Fraudulent Act or omission: Any such act or omission as the law specially declares to be fraudulent.

Misrepresentation

Representation is a statement or assertion, mad by one party to the other, before or at the time of the contract, regarding some fact relating to it. Misrepresentation arises when the representation made is inaccurate but the inaccuracy is not due to any desire to defraud the other party. There is no intention to deceive.

Section 18 of the Contract Act classifies cases of misrepresentation into three groups as follows:

Unwarranted Assertion: The positive assertion , in a manner not warranted by the information of the person making it, of that which is not true, through he believes it to be true.
Breach of Duty: "Any breach of duty which, without an intent to deceive, gains an advantage to the persons committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him.
Innocent Mistake: " Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreements.
Consequences of Misrepresentation
In cases of misrepresentation the aggrieved party can:

- avoid the agreements, or

- insist that the contract be performed and that he shall be put in the position in which he would have been if the representation made had been true.

Short notes on Coercion

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

Example: P threatens to shoot Q if he does not let out this house to P and Q agrees to do so. The agreement has been brought about by coercion.

Consequences of Coercion
A contract brought about by coercion is voidable at the option of the party whose consent was so caused. The aggrieved party can have the contract set aside or he can refuse to perform it and take the defence of coercion if the other party sought to enforce it.

Short notes on Undue influence

A contract is said to be induced by undue influence where
- one of the parties is in a position to dominate the will of the other and
- he uses the position to obtain an unfair advantage over the other

Presumptions
Section 16(2) provides that undue influence may be presumed to exist in the following cases:
1. where one party holds a real or apparent authority over the other or where he stands in a fiduciary relationship (relationship of mutual trust and confidence) to the other.
2. Where a party makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

Consequence of Undue Influence : An agreement induced y undue influence is voidable at the option of the party whose consent was so caused. Such an agreement may be set aside absoluely or, 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.

Q. What is Contracts uberrimae Fidei?

Uberrimae Fidei contracts are contracts where law imposes upon the parties the duty of making a full disclosure of all material facts. In such contracts, if one of the parties has any information concerning the subject matter of the transaction which is likely to affect the willingness of the other party to enter into the transaction, he is bound to disclose the information.

Examples:
The following contracts come within the class of uberrimae fidei contracts.
- **Contracts of insurance:** The assured must disclose to the insurer all material facts concerning the risk to be undertaken. Upon failure to do so, the contract may be avoided.
- **Fiduciary relationship:** contracts in which parties stand in a fiduciary relation to each other e.g., contract between solicitor and client, father and son

- **Contract for the sale of immovable property:** Under Section 55(1) (a) of the Transfer of Property Act, the seller is bound "to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover."
- **Allotment of shares of companies:** Persons who issue the prospectus of a company have the duty of disclosing all information regarding the company have the duty of disclosing all information regarding the company with strict accuracy.
- **Family settlements:** When family disputes are settled by mutual agreement, each party is bound to disclose any information possessed by him regarding the value of family properties.

Termination or Discharge of Contracts

Q. What remedies are available to an aggrieved person in case of breach of contract?

When a breach of contract occurs, the aggrieved party or the injured party becomes entitled of the following relief:

1. Rescission (cancel) of the contract: The aggrieved party is freed from all his obligations under the contract.

Example: C promises to deliver 5 ton of sugar to B on a certain date and B promises to pay the price on receipt of the goods. C does not deliver the goods on the appointed day. B needs to pay the price.

2. Suit for Damages: The aggrieved party is entitled to receive compensation for any loss or damage caused to him by the breach of contract and can file suit for getting a decree for damage. The amount of damages would depend upon the type of loss caused to the aggrieved party by the breach. The court would first identify the losses caused and then assess their monetary value. Keeping in view the provisions of section 73 and the court judgments, the aggrieved party would be entitled to one of the following types of damages, depending upon the circumstances of the case:

A. **General or ordinary damages:** Damages arising naturally and directly out of the breach in the usual course of the things.
B. **Special damages:** Compensation for the special losses caused to the aggrieved party by the special circumstances attached to the contract.
C. **Exemplary damages:** Damages for the mental or emotional suffering also caused by the breach.

3. Suit for Specific Performance: In certain cases of breach of a contract, damages may not be an adequate remedy. Then the court may direct the party in breach to carry out his promise according to the terms of the contract. Cases where specific performance may be ordered:

- Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non-performance.
- Where monetary compensation will not be adequate relief.
- Where the act to be done is in the performance of trust.
- In general the court will only grant specific performance where it would be just and equitable to do so.

4. Suit for Injunction: Under certain circumstances, the court can issue an order upon a party whereby he is prohibited from doing something which amounts to a breach of contract.

5. Suit upon Quantum Meruit: When a contract has been partly performed the aggrieved party can, under certain circumstances, file a suit for the price of the services performed before breach of contract.

Q. Define Quantum Meruit

The phrase "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 the Doctrine of Quantum Meruit.

Rules: The rules regarding the Doctrine of Quantum Meruit are stated below:

1. Where there is a breach of contract, the injured party is entitled to claim reasonable compensation for what he was done under the contract.

   Example: P agreed to write a book to be published by installments in a magazine owned by C. After a few installments were published the magazine was abandoned. P is entitled to get damages for breach of contract and payment quantum meruit for the part already published.

2. When a contract is discovered to be unenforceable for some technical reason, any person who had done something under the contract, is entitled to reasonable compensation.

Indemnity and Guarantee

Q. Define a contract of indemnity?
Or. Short notes on Indemnity

Section 124 of the Contract Act defines a contract of indemnity as 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. In a contract of Indemnity, there are only two parties, the indemnifier and the indemnity-holder. In a contract of indemnity it is necessary to have only one contract i.e., between the indemnity-holder and the indemnifier;

Example: P, contracts to indemnify Q against the consequences of any proceeding which R may take against Q in respect of certain sum of Tk. 50000. This is a contract of indemnity. P is called the indemnifier and Q the indemnity holder.

Q. Distinguish between a Contract of Indemnity and a Contract of Guarantee.

Contract of Indemnity	Contract of Guarantee.
As per the Contract Act defines the contract of indemnity as 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.	A contract of guarantee is a contract to perform the promise or discharge the liability , of a third person in case of his default
In a contract of Indemnity, there are only two parties, the indemnifier and the indemnity-holder.	In a contract of guarantee there are three parties: the creditor, the principal debtor, and the surety
In a contract of indemnity it is necessary to have only one contract i.e., between the indemnity-holder and the indemnifier;	In a contract of guarantee it is necessary to have three contracts, (i) one between the creditor and the principal debtor, (ii) another between the surety and the creditor, and (iii) the third, an implied contract between the surety and the principal debtor.
In a contract of indemnity, the liability of the indemnifier is primary	In a contract of guarantee, the liability of the surety is secondary i.e., the surety is liable only if the principal debtor fails to perform his obligations.
In a contract of Indemnity, the liability of the indemnifier arises only on the happening of a contingency.	In a contract of guarantee there is an existing debt or duty, the performance of which is guaranteed by the surety.

Contract of Indemnity	Contract of Guarantee.
In a contract of indemnity the indemnifier can sue only the indemnity-holder for his loss, because there is no contract between the indemnified and other parties unless there is an assignment on his favour.	In a contract of guarantee the surety can proceed against principal debtor
In a contract of indemnity the loss falls on the indemnifier except in certain special cases.	In a contract of guarantee the surety, after he discharges the debt owing to the creditor, can proceed against the principal debtor.

Bailment and Pledge

Q. Define Bailment? Or What do you understand 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 persons delivering them.

The person delivering the goods is called the Bailor. The person to whom they are delivered is called the Bailee and the transaction is called Bailment.

Characteristics of Bailment:

- **Delivery**. It is delivery of goods by one person to another.
- **Purpose**. The goods are delivered for some purpose.
- **Return**. It is agreed that when the purpose is accomplished the goods are to be returned or otherwise disposed of according to the direction of the bailor.
- **Contract**. Bailment arises from express or implied contract. In case of finders of goods bailment arises by implication of law.
- **Ownership**. In bailment the bailor continues to be the owner of the goods. Therefore, bailment does not cause any change of ownership.
- **Movable goods**. Bailment is concerned only with movable goods. Money is not included in the category of movable goods. A deposit of money is not bailment.
- **Possession.** A person already in possession of the goods may become a bailor by a subsequent agreement , express or implied.

Q. What are the duties of a Bailee?

- **Duty of reasonable care**. The bailee is bound to take as much care of goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.
- **Bailee's liability for negligence of servants**. A bailee is liable for damages caused by negligence of the servants about the use or custody of the things bailed, when acting in the course of their employment. But the bailee is not liable for damages caused by the acts or default of third person which cannot be prevented by ordinary diligence. The bailee is not liable for unauthorized acts of his servants outside the scope of their employment.
- **Unauthorized use of goods.** If the bailee makes unauthorized use of goods bailed, he is responsible for all damages to the goods and must pay compensation to the bailor. This liability arises even if the bailee is not guilty of any negligence and even if the damages is the result of accident.

- **Mixture of bailor's goods with the bailee's.** If the bailee mixes up his goods with those of the bailor, the following rules apply:
  - ✓ If the bailee with the consent of the bailor, mixes the goods of the bailor with his own goods , the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.
  - ✓ If the bailee without the consent of the bailor mixes the goods of the bailor with his own goods , and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separating or dividing, and any damage arising from the mixture.
  - ✓ If the bailee without the consent of the bailor mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.
- **Duty of returning goods.** It is the duty of the bailee to return or deliver according to the bailor's direction goods bailed without demand , as soon as the time for which they were bailed has expired or the purpose for which they were bailed accomplished .

If , by the default of the bailee , the goods are not returned, delivered or tendered at the proper time , he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

Q. How a pledge defers from a bailment?
Or Q. How a pledge differs from a bailment?

Pledge is a particular kind of bailment. The difference between Pledge and other kinds of bailment lies in the purpose or objective of the transactions. The purpose of a pledge is to provide security for a debt or the performance of a promise. In other kinds of bailment there are other purposes for example, repair, safe custody etc. The pledgor and the pledge have certain special rights and duties.

Q. Can a non-owner make a valid pledge?
Or Q. When can a non-owner make a valid pledge?

The owner of goods can always make a valid pledge. In the following cases, one who is not an owner can make a valid pledge:

1. **Mercantile Agent:** A mercantile agent who is, with the consent of the owner, in possession of the goods or of the documents of title to goods, can make a valid pledge of the goods while acting in the ordinary course of business of a mercantile agent.
2. **Possession under a Voidable Contract:** A person having possession of goods under a voidable contract can make a valid pledge of the goods so long as the contract is not rescinded. The pawnee gets a good title to the goods provided he acts in good faith and without notice of the pawnor's defect of title.
3. **Pawnor with a Limited Interest:** Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent to that interest.
4. **Possession with Co-owner:** If one of several co-owners is in sole possession of the goods with the consent of the owners, he can make a valid pledge of the goods.

Q. Define by way of Pledge or Pawn

The bailment of goods as security for payment of a debt or performance of a promise is called pledge or pawn. The bailor in this case is called the Pledgor or the Pawnor. The bailee is called the Pledgee or Pawnee.

Q. How a Bailment is terminated?

A contract of bailment terminates under the following circumstances:

1. **Efflux of time:** If the bailment is for a stipulated period, the bailment terminates as soon as the stipulated period expires.
2. **Fulfillment of purpose:** If the bailment is for a specific purpose, the bailment terminates as soon as the purpose is fulfilled.
3. **Act inconsistent with terms:** If the bailee does any act, with regard to the goods bailed, which is inconsistent with the terms of the bailment, the bailment terminates.
4. **Goods lent gratuitously:** A gratuitous bailment can be terminated any time but if premature termination causes any loss to the bailee, the bailor must indemnify the bailee.
5. **Death:** A gratuitous bailment terminates upon the death of either the bailor or the bailee

Q. What are the rights of a Pawnee?

- **Right of Retainer.** The pawnee can retain the goods pledged not only for payment of the debt or the performance of the promise , but also for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

- **Retainer for subsequent advance.** The pawnee's lien is a particular lien i.e., he can not retain the goods for any debt other than the debt for which the security was given unless there is an express contract to the contrary. If the pawnee makes fresh advances to the same debtor it will be presumed that the debtor has agreed to create on the goods already pledged a lien for the fresh advance.
- **Extraordinary expenses.** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.
- **Pawnee's right where the pawnor makes default.** If the pawnor makes a default in payment of the debt , or performance, at the stipulated time of the promise , in respect of which goods were pledged, the pawnee may bring a suit against pawnor upon the debt or promise, and retain the goods pledged as collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.
- If the proceed of the sale are les than the amount due in respect of the debt or promise , the pawnor is still liable to pay the balance. If proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Q. Difference between

Bailor and Bailee:

The person delivering the goods is called the Bailor. The person to whom they are delivered is called the Bailee

Bailment and Pledge:

Pledge is a particular kind of bailment. The difference between Pledge and other kinds of bailment lies in the purpose or objective of the transaction. The purpose of a pledge is to proved security for a debt or the performance of a promise. In other kinds of bailment there are other purposes for example, repair, safe-custody etc. The pledgor and the pledge have certain special rights and duties.

Law of Agency

Q. Explain the different classes of Agents.

1. **Broker**. A broker is one who brings buyers and sellers into contract with one another. His duties are at an end when the parties are brought together. The contract of sale and purchase is entered into directly by the parties.
2. **Factor**. A factor is a mercantile agent with whom goods are kept for sale. He has got discretionary powers to enter into contracts of sale with third parties. He has a general lien on the goods for money due to him as agent.
3. **A Commission Agent**. A commission agent is one who secures buyers for a seller of goods and sellers for a buyer of goods in return for a commission on the sale.
4. **Auctioneer**. An auctioneer is one who is authorized to sell goods of his principal. He has a particular lien on the goods for his remuneration. He has the goods in his possession and can sue the buyer in his own name for the purchase price. An auctioneer acts in a double capacity. Up to the moment of sale he is the agent of the seller, after the sale he is the agent of the buyer.
5. **A Del Credere Agent**. A del credere agent is one who, for extra remuneration, guarantees the performance of the contract by the other party. If the other party fails to pay the price or otherwise causes damage to the principal, the del credere agent must pay compensation to the principal.
6. **General Agent and Particular Agent.** A general agent is one who represents the principal in all matters concerning a particular business. A particular agent is one who is appointed for a specific purpose e.g., to sell particular article. Factors and commission agents are usually general agents.

Q. What are the duties of an agent to his principal?
Q. State the duties of an agent to the principal.

- **Agent's duty in conducting principal's business**. An agent is bound to conduct the business of his principal according to the directions given by the principal or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained he must make it good to his principal ,and, if any profit accrues, he must account for it
- **Skill and diligence required from agent.** An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill.
- **Agent's duty to render accounts:** An agent is bound to render proper accounts to his principal on demand, or periodically if so provided in the agreement.
- **Agent's duty to communicate to principal:** It is the duty of an agent , in cases of difficulty , to use all reasonable diligence in communicating with his principal, and seeking to obtain his instructions.
- **Agent not to deal with his own account:** If an agent deals with his own account in the business of the agency, without first obtaining the consent of the principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that dealings of the agent have been disadvantageous to him.
- **Principal to get benefit of agent's dealing:** If the agent without the knowledge of his principal, deals in the business of the agency on his own account, instead of on account of his principal, the principal is entitled to claim

from the agency any benefit which may have resulted to him from the transaction. The agent has a duty not to make secret profits.

- **Agent's duty to pay sums received for principal:** The agent is bound to pay to his principal all sums received on his account after deducting there from his dues on account of remuneration and expenses.
- **Principal's death or insanity:** When an agency is terminated by the principal dying or becoming of unsound mind , the agent is bound to take on behalf of the representatives of his late principal , all reasonable steps for the protection and preservation of the interests entrusted to him.
- **The agent has other duties also**: The agent may give all information to the principal. He must not delegate his authority. He must avoid the clash between his duty and self interest. He should be loyal to the principal. He must not set up an adverse title against the principal.

Q. Short notes on Agent

An 'agent' is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'. An agent is to exercise his authority in accordance with the principal's instructions.

Q. Short notes on Agency of necessity

Circumstances sometimes force a person to act on behalf of another without any express authority from him. In such cases an agency of necessity is said to be created.

Three conditions must be satisfied before an agency can be created by necessity:

(a) It must be impossible to get the principal's instructions;
(b) There must be an actual necessity for acting on his behalf:
(c) The agent of necessity must act honestly in the interest of the parties concerned.

Example: A horse, sent by a train, arrived at a station with nobody to receive it. The railway company fed the horse. Held, the railway company was an agent of necessity and was entitled to recover the money from the owner.

Q. What is meant by agency by ratification? State the conditions that must be fulfilled before the doctrine of ratification can apply to an act of an agent?

Agency by ratification: A person may act on behalf of another without his knowledge or consent. For example, A may act as P's agent though he has no prior authority from P. In such a case P may subsequently either accept the act of A or reject it. If he accepts the act of A, done without his consent, he is said to have ratified that act and it places the parties in exactly the same position in which they would have been if A had P's authority at the time he made the contract. Likewise, when an agent exceeds the authority bestowed upon him by the principal, the principal may ratify the unauthorized act.

Condition: To be valid, ratification must fulfill the following conditions:

5. The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract
6. The principal must be in existence at the time of contract.
7. The principal must have contractual capacity both at the time of the contract and at the date of the ratification.
8. Ratification must be with full knowledge of facts.

9. Ratification must be made within a reasonable time
10. The act to be ratified must be a lawful one. There can be no ratification of an illegal act or an act which is void.
11. Ratification must be of the whole contract. There cannot be partial ratification and partial rejection.
12. Ratification must be communicated to the party who is sought to be bound by the act done by the agent.
13. Ratification can be of the acts which the principal had the power to do.
14. Ratification should not put a third party to damages
15. Ratification relates back to the date of the act of the agent.

Q. Discuss the different modes in which the authority of an agent may terminate

The different modes in which the authority of an agent may terminate are furnished below:

1. **Termination of agency by act of the parties:**
    - **Agreement:** The relation of principal and agent like any other agreement may be terminated at any time and at any stage by the mutual agreement between the principal and the agent.
    - **Revocation by the principal:** The principal may revoke the authority of the agent at any time before the agent has exercised his authority so as to bind the principal unless the agency is irrevocable.
    - **Revocation by the agent:** An agency may also be terminated by an express renunciation by the agent after giving a reasonable notice to the principal.

2. **Termination of agency by operation of law:**
    - **Performance of the contract:** The most obvious mode of putting an end to the agency is to do what the agent has undertaken to do. Where the agency is for a particular object, it is terminated when the object is accomplished or when the accomplishment of the object becomes impossible.
    - **Expiry of time:** When the agent is appointed for a fixed period of time, the agency comes to an end after the expiry of that time even if the work is not completed.
    - **Death and insanity:** When the agent or the principal dies or becomes of unsound mind, the agency is terminated.
    - **Insolvency:** The insolvency of the principal puts an end to the agency.
    - **Destruction of subject matter:** An agency which is created to deal with a certain subject-matter comes to an end by the destruction of the subject-matter.
    - **Principal becoming an alien enemy:** When the agent and the principal are aliens, the contract of agency is valid so long as the countries of the principal and the agent are at peace. If war breaks out between the two countries, the contract of agency is terminated.
    - **Dissolution of a company:** When a company, whether principal or agent, is dissolved, the contract of agency with or by the company automatically comes to an end.
    - **Termination of sub-agents authority:** The termination of an agent's authority puts an end to the sub-agent's authority.

Q. An agent is a mere connecting link between the principal and a third party.

A person who has capacity to contract may enter into a contract with another (i) either by himself, or (ii) through another person. When he adopts the latter course, he is said to be acting through an 'agent'.

An 'agent' is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'. An agent is to exercise his authority in accordance with the principal's instructions. So the function of an agent is to bring his principal into contractual relations with third persons. This means that an agent is merely a connecting link between the principal and third parties.

Q. A Principal can always revoke an Agent's authority.

The principal may revoke the authority of the agent at any time before the agent has exercised his authority so as to bind the principal unless the agency is irrevocable. But if the act is begun, the authority can only be revoked subject to any claim which the agent may have for breach of contract. Where the agency is a continuous one, notice of its termination to the agent and also to the third parties is essential.

Q. Consideration is not necessary in a contract of agency.

Agency depends on agreement but not necessarily on contract. As between the principal and third persons any person may become an agent. As such, even a minor or a person of unsound mind may be an agent. Again, no consideration is necessary to create an agency. The fact that the principal has agreed to be represented by the agent is sufficient 'detriment' to the principal to support the contract of agency.

Q. Difference between (i) Agent and contractor (ii) Agent and Bailee.

Agent and contractor

A person who undertakes to do something for another is called an independent contractor, if the manner of doing the thing is left to him. An independent contractor does not represent the other contracting party nor can be bind him by contracts entered into with others. An agent is one who acts according to the instructions of the principal and can bind the principal by entering into contracts with other persons within the scope of his authority.

Agent and Bailee

The differences between an Agent and a Bailee are summarized below:

1. The bailee has possession of goods of the bailor. An agent may not have possession on any goods or property of the principal.
2. The bailee has no power to create any contractual relationship with the third party. An agent has that authority.
3. Under certain circumstances a bailee may act as an agent.

Q. Short notes on Commercial or Mercantile Agent

A mercantile agent having in the customary coure of business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods. All kinds of mercantile agents are as follows:

1. **Broker:** A broker is one who brings buyers and sellers into contract with one another. His duties are at an end when the parties are brought together.
2. **Factor:** A factor is a mercantile agent with whom goods are kept for sale. He has got discretionary powers to enter into contracts of sale with third parties.
3. **A Commission Agent**. A commission agent is one who secures buyers for a seller of goods and sellers for a buyer of goods in return for a commission on the sale.
4. **Auctioneer**. An auctioneer is one who is authorized to sell goods of his principal. He has a particular lien on the goods for his remuneration. He has the goods in his possession and can sue the buyer in his own name for the purchase price.
5. **A Del Credere Agent**. A del credere agent is one who, for extra remuneration, guarantees the performance of the contract by the other party. If the other party fails to pay the price or otherwise causes damage to the principal, the del credere agent must pay compensation to the principal.

Law relating to Sale of Goods

Q. What do you understand by a Contract of Sale of Goods?

A contract for the sale of goods may be either a **sale or an agreement to sell**. Where under a contract of sale the property in the goods (i.e., the ownership) is transferred from the seller to the buyer the contract is called a sale. The transaction is a sale even though the price is payable at a later date or delivery is to be given in the future provided the ownership of the goods is transferred from the seller to the buyer.

Q. What are the essentials of a contract of Sale?

The essential elements of a contract of sale of goods are;

o ***Movable goods****:* The sale of Goods Act deals only with movable goods, excepting actionable claims and money.

o ***Movable goods for money***: There must be a contract for the exchange of movable goods for money. Therefore, in a sale there must be money consideration. An exchange of goods for goods is not a sale. But it has been held that if an exchange is made partly for goods and partly for money, the contract is one of sale

o ***Two Parties***: Since a contract of sale involves a change of ownership, it follows that the buyer and the seller must be different persons. A sale is a bilateral contract. A man can not buy from or sell goods to himself. There is an exception' a part owner can sell goods to another part-one.' Therefore a partner may sell goods to his firm and the firm may sell goods to a partner.

o ***Formation of the contract of sale***: A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both or for the delivery and payment by installments or that the delivery or payment or both shall be postponed.

o ***Method of forming the contract***: Subject tot the provision of any law for the time being in force, a contract of sale may be in writing, or by word of mouth, or may be implied from the conduct of the parties.

o ***The terms of contract***: The parties may agree upon any term concerning the time, place, and mode of delivery. The terms may be of two types: essential and non-essential. Essential terms are called conditions, non-essential terms are called warranties.

o ***Other essential elements*;** A contract for the sale of goods must satisfy all the essential elements necessary for the formation of a valid contract.

Q. State the different types of goods.
Q. Discuss on the classification of Goods.

o ***Goods*:** The term goods include every kind of movable property except (i) actionable claims and (ii) money. Actionable claim means a debt or a claim for money, which a person may have against another and which he may recover by suit. Money means legal tender money. Movable articles like furniture, clothing etc and shares and debentures are goods. Things attached to the earth are not movable. But growing crops and grass and fruits are included within the definition of movable goods.

o ***Existing Goods*:** Existing goods are goods which are already in existence and which are physically present in some person's possession and ownership. Existing may be either:

o ***Specific and Ascertained or Generic and Unascertained.*** Specific goods are goods which can be clearly identified and recognized as separate things, e.g., a particular picture by a painter; a ring with distinctive features; goods identified and agreed upon at the time of the contract of sale etc.

o ***Generic Goods or Unascertained Goods*** are goods indicated by description and not separately identified. If a merchant agrees to supply one bag of wheat from his godown to the buyer, it is a sale of unascertained goods because it is not known which bag will be delivered. As soon as a particular bag is separated out and marked or identified for delivery it becomes specific goods.

o ***Future Goods:*** Future goods are goods which will be manufactured or produced or acquired by the seller after the making of the contract of sale.

o ***Contingent Goods*****:** There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen. In such cases the goods sold are called contingent goods.

Q. A contract of sale for future goods is a valid contract.

These are the goods which a seller does not possess at the time of the contract but which will be manufactured or produced or acquired by him after the making of the contract of sale. A contract of present sale of future goods, through expressed as an actual sale, purports to operate as an agreement to sell the goods and not a sale. This is because the ownership of a thing cannot be transferred before that thing comes into existence.

Example: A railway administration entered into a contract for sale of coal-ash that might accumulate during the period of contract

Q. What do you understand by Conditions and Warranties?
Or Difference between Condition and Warranty

Section 12 of the Sale of Goods Act states that a stipulation in a contract of sale, with reference to goods, may be a condition or a warranty.

o ***Condition*****:** A condition is a stipulation essential to the main purpose of contract, the breach of which gives rise to a right to treat the contract as repudiated.

o ***Warranty*****:** A warranty is stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to treat the contract as repudiated.

o Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be condition, though called warranty in the contract.

o *Conditions and warranties* may be expressly stated in a written document or may be implied from the circumstances under which the contract was entered into.

o It is for the court to find out whether a particular term was intended by the parties to be a condition or whether it was intended to be a warranty only. The intention of the parties is always to be given effect to. In determining whether a stipulation is a condition or a warranty the most important thing to be considered is the intention of the parties as reflected in the terms of the contract or the conduct of the parties.

Q. Explain the implied condition and guarantees under the Sale of Goods Act, 1931

A stipulation in a contract of sale of goods may be express or implied. Express terms are those which have been expressly agreed upon by the parties. Implied terms are those which have been enacted in the Sale of Goods Act. Sections 14 – 17 of the Act contain a list of conditions and warranties which are implied in a contract for the sale of goods, unless the circumstances of the contract are such as to show a different intention.

o ***Implied conditions:***

o ***Conditions as to title.*** There is an implied condition on the part of the seller that, in the case of a sale, he has the right to sell the goods and in the case of an agreement to sell , he will have the right to sell the goods at the time when the property is to pass-

o ***Sale by description*.** Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description Goods are to be sold by description when the contract contains a description of the goods to be supplied. Such description may be in terms of the physical characteristics of the goods or may simply mention the trade mark, trade name, brand or label under which they are usually sold.. 0

- A sale of 50 boxes of X brand soap or of 10 tons of Y brand mustard oil, is a sale of goods by description. In such cases the goods supplied must be the same as the goods described
- *Sale by sample.* When goods are to be supplied according to a sample agreed upon , the following conditions are implied-
    - The bulk shall correspond with the sample in quality.
    - The buyer shall have a reasonable opportunity of comparing the goods with the sample.
    - The goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. If the defect is easily discoverable on inspection and the buyer takes delivery after inspection, he has no remedy.
- *Sale by sample as well as by description*. When goods are sold by sample as well as by description, the goods shall correspond both with the sample and with the description.

o ***Condition as to fitness or quality*.** There is an implied condition as to quality of fitness for the purpose of the buyer under the following circumstances only:

- Where the buyer , expressly or by implication , makes known to the seller the particular purpose for which the goods are required , so as to show that the buyer relies on the seller's skill , or judgment , and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not).
- An implied condition of fitness may be annexed to a contract of sale by usage of trade or custom of the locality.
- When goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer, or producer or not) there is an implied condition that the goods are of merchantable quality, that is, fit to sell.

o ***There is one exception to the above rule*** **–** if the buyer has examined the goods, there shall be no implied condition as regards defects which that examination ought to have revealed.

Q. What do you mean by the rule of 'Caveat Emptor'? State its exceptions and the modern trend in the society?

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 can not blame the seller or recover damages from him. 'The rule probably originated at a time when goods were mostly sold in market overt, and the buyer therefore, had every opportunity to satisfy him as to the quality of goods or their fitness for a particular purpose. And at common law it was presumed that where the buyer could examine the goods even though he did not, he relied upon his own skill and judgment.

Exceptions

The doctrine of caveat emptor is used with the following exceptions:

- Where the buyer relies upon the skill and judgment of the seller.
- Where by custom an implied condition of fitness is annexed to a contract of sale.
- Where there is a sale of goods by description, there is an implied condition that the goods are fit for sale.
- Where the seller is guilty of fraud a contract of sale of goods must satisfy all the essential elements of a contract and therefore if the consent of the buyer was obtained by fraud, the seller is not protected by the doctrine of caveat emptor.

In cases not falling under any of the four exceptions noted above, the seller is not liable to any penalty. If the goods purchased are found to be unfit by the buyer for the purpose he had in mind.

Q. Explain the difference between a Condition and Warranty?

o Condition is a term which is essential to the main purpose of the contract. Warranty is only a collateral term. It is subsidiary to the main purpose of the contract.

o Breach of condition gives the aggrieved party a right to repudiate the contract. It also creates a right to get damages. Breach of warranty entitles the aggrieved party to claim damages only.

o A breach of condition under certain circumstances is treated as warranty. But a warranty can not become a condition.

Q. When a Condition can be treated as a Warranty?

Condition can be treated as a Warranty under the following circumstances

o ***Voluntary waiver of a condition***: The buyer may elect to treat a breach of condition as a breach of warranty i.e., instead of repudiating the contract he may accept performance and sue for damages, if he has suffered any.

o Where a contract of sale is subject to a condition to be fulfilled by the seller, the buyer may waive the condition.

o ***Compulsory waiver of a condition***: Where a contract of sale is not severable and the buyer has accepted the goods or a part thereof, he can not repudiate the contract but can only sue for damages. In such a case, the breach of conditions can only be treated as a breach of warranty, unless there is a contract to the contrary.

o If the buyer prevents the fulfillment of a condition contained in the contract, the condition becomes invalid.

o Certain goods were promised to be delivered on 1st June, time being the essence of the contract. The goods were delivered on the 2nd June. The buyer may accept the goods.

Q. Who is an unpaid seller? Describe the rights of an unpaid seller?

Unpaid Seller

The unpaid seller of goods, who is in possession of them, is entitled to retain possession until payment or tender of the price in the following cases:

- Where the goods have been sold without any stipulation as to credit;
- Where the goods have been sold on credit but the term of credit has expired;
- Where the buyer becomes insolvent.

Rights of an unpaid seller

o ***The right of stoppage in transit*.** When the buyer of goods becomes insolvent, and the goods are in course of transit to the buyer, the seller can resume possession of the goods from the carrier. This is known as the right of stoppage in transit.

o ***The right of resale*.** The unpaid seller who has retained possession of the goods in exercise of his right of lien or who has resumed possession from the carrier upon insolvency of the buyer, can resale the goods.

- If the goods are of perishable nature , without notice to the buyer;
- And in other cases after notice to the buyer, calling upon him to pay or tender the price within reasonable time, and upon failure of the buyer to do so.

o ***Suit for the price*.** Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

o ***Suit for damages*.** Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non acceptance.

o ***Claim for interest and Special damages*.** The seller may recover interest or special damages in any case where by law interest or special damages may be recoverable. He may also recover the money paid where the consideration for the payment of it has failed.

Q. Under what circumstances can a breach of condition be treated as a breach of warranty?

Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

Q. State the differences between the following

Sales and Hire-purchase

In a sale, the property is transferred to the buyer; he can deal with the property as he likes and the transferee of the purchase gets a good title even if the price is unpaid. But in a hire-purchase agreement, the purchaser does not become owner till the full price is paid and therefore, the transferee from a person who has not paid the full price, gets no title.

Sales and Agreements to Sell

A contract for the sale of goods may be either a **sale or an agreement to sell**.

Sale
Where under a contract of sale, the ownership in the goods is transferred from the seller to the buyer the contract is called a sale. The transaction is a sale even though the price is payable at a later date or delivery is to be given in the future provided the ownership of the goods is transferred from the seller to the buyer.

Agreement to sell: When the transfer of ownership to take place at a future time, or subject to some condition to be fulfilled later the contract is called an agreement to sell.

Difference between a sale and an agreement to sell

Transfer of ownership. In an agreement to sell the property in the goods remains with the seller until the agreement to sell becomes a sale by the expiry of the agreed time or the fulfillment of the agreed conditions. Till this happens the goods can be resold by the seller or attached in execution of a decree against him. In case of a sale the property passes to the buyer and the goods can not be seized in execution of a decree against the seller.

Transfer of risk. Where the transaction amounts to a sale , the goods belong to the buyer and he has to bear the loss if the goods are subsequently damaged or destroyed.

Remedial measures: In the case of a sale, the unpaid seller has certain reliefs available, e.g., lien, stoppage in transit, resale etc. In case of agreement to sell , the seller's remedy for breach of contract by the buyers, is suit for damages.

Nature of Contract: Sale is an executed contract because in a sale, the consideration moves simultaneously with the promises of both parties. Also, in a sale the property of specific goods is transferred to the buyer immediately. But an agreement to sell is an executory contract because the consideration is to move at a future date. Also the property of specific goods passes to the buyer later.

Hire-purchase and Installment Sale

There are differences between a hire-purchaser and installment sale. In the former, a sale is concluded after the total price and hire charges are completely paid. The purchaser is not entitled to transfer the goods until the terms of the agreement are fully carried out. In the later, the purchaser becomes the owner of specific goods immediately, although the total price is to be paid in a number of installments.

Law relating to Partnership

Q. What do you understand by the term partnership?
Or Q. What do you understand by Partnership at will?

Partnership can defined as the relation between two or more persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

The essential elements of a partnership

1. **Voluntary Agreement:** A partnership can only arise as a result of an agreement, express or implied, between two or more persons. Where there is no agreement there is no contract.
2. **Sharing of profit of a Business**: The agreement must be to share the profits of a business.
3. **Mutual Agency:** The business must be carried on by all or any of them acting for all.

Q. "A partner is an agent and principal of a firm." Do you agree? Explain briefly.

Mutual Agency is the third element and is the most important feature of partnership. It states that persons carrying on business in partnership are agents as well as principals. The business of a firm is carried on by all or by any one or more of them on behalf of all. Every partner has the authority of the to act on behalf of all and can, by his actions, bind all the partners of the firm. Each partner is the agent of the others in all matters connected with the business of the partnership. The law of partnership has therefore been called a branch of the law of agency.

Q. "Sharing of profits is only 'prima facie' evidence of Partnership"- Discuss

The second element of partnership states that the agreement must be to share the profits of a business. It also lays down that the existence of a business is essential to a partnership. Business includes any trade, occupation or profession. If two or more persons join together to form a music club it is not a partnership because there is no business in this case. But if two or more persons join together to give musical performances to the public with a view to earning profit, there is a business and a partnership is formed.

Q. What are the various classes of partners?

The three most used partnership types are furnished here:

General Partnership: A general partnership is a partnership with only general partners. Each general partner takes part in the management of the business, and also takes responsibility for the liabilities of the business. If one partner is sued, all partners are held liable.

Limited Partnerships A limited partnership includes both general partners and limited partners. A limited partner does not participate in the day-to-day management of the partnership and his/her liability is limited.

Limited Liability Partnerships : A limited liability partnership (LLP) is different from a limited partnership or a general partnership, but is closer to a limited liability company (LLC). In the LLP, all partners have limited liability. An LLP combines characteristics of partnerships and corporations.

Q. What is Partnership-at-will

Where no provision is made by contract between the partners for the duration of the partnership, or for the determination of the partnership, the partnership is "partnership-at-will". It may be dissolved by any partner by giving a notice in writing to all other parners of his interntion to dissolve the firm. When such a notice is given, the firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Q. Explain the doctrine of "holding out" in reference to the relation of partners to third parties.

Doctrine of Holding – Out makes an exception to the rule that a person cannot confer a better title than he himself has. An ostensible owner is one who has all the indicia of ownership without being the real owner. Where the true owner of a property, expressly or impliedly, permits another person to hold himself as the true owner of the property and a third party, in good faith, deals with the person so permitted, then such third party will acquire a good title as against the true owner.

Following conditions are required to be complied with, so as to provide the protection to the third party against the true owner:

- The transferor is the ostensible owner;
- He is ostensible owner by the express or implied consent of the true owner;
- The transfer is for consideration; and
- The transferee has acted in good faith.

Q. Can a partner of a firm be considered as an agent of other partner?

As agreement between the partners of a firm to carry on a business and share its profit may be followed by a separate agreement between the same partners to carry on another business and share the profits therein. It will depend on the intention of the partners whether they intend to

a) constitute two separate partnerships and therefore two distinct firms, or
b) extend merely a partnership, originally constituted to carry on one business, to the carrying on of another business.

Q. Is registration obligatory for a firm under the Partnership Act? What are the disadvantages of non-registration of a firm?

or Q. Although registration of firms is not compulsory, firms are usually registered. What are the disadvantages for non-registration of a firm under the Law of Partnership?

The Partnership Act does not provde for the compulsory registration of firms. It has left it to the option of the firms to get themselves registered. But indirectly, by creating certain disabilities from which an unregistered firm suffers, it has made the registration of firms compulsory. The disabilities are such that, sooner or later, every firm has to get itself registered.

Effect of non-registration

1. **Suits between partners and firm:** A person suing as a partner of an unregistered firm cannot sue the firm or any partners of the firm to enforce a right arising from a contract or conferred by the Partnership Act. He can do so if

(i) the firm is registered, and

(ii) the person suiting is or has been shown in the Register of Firms as a partner in the firm

2. **Suits between firm and third parties**: An unregistered firm cannot sue a third party to enforce a right arising from a contract until (i) the firm is registered and (ii) the names of the persons suting appear as partners in the Register of Firms.

3. **Calim of set-off**: An unregistered firm or any partner thereof cannot claim a set-off in a proceding instituted against the firm by a third pary to enforce a right arising form a contract, until the registration of the firm is effected.

Q. The partnership firm has no legal existence apart from the partners.

Partnership is merely an abstract legal relation between the partners. It is, in other words, an abstract thing. A firm is a collective name for all the partners. It is a concrete thing. Partnership may be styled as the invisible body (collective group) of those partners who are thus bound together.

In commercial usage, a firm is deemed to have existence distinct from the partners costituting it. In some of the continenteal countries also a firm is recognised as legal person distinct from the partners constituing it. But in England and India a firm is not a distinct legal entity apart from the partners constituting it. Unlike a company which is a corporate body, it is not regarded as a person in the eyes of the law. Firm is only a abridged name for the individuals who compose it. It is not a legal entity. Its name is merely an abbreviated or abridged name for all its partners. The rights and obligation of a firm are really the rights and obligations of the partners who compose the firm.

Q. State the position and rights of a minor under the Law of Partnership

In partnership, a minor can be admitted to the benefits of partnership with the consent of the other partners, he may be admitted to the benefits of partnership. In a joint family business, a male minor becomes its member merely by birth.

Q. T/F Sharing of profit is an essential element of partnership, it is not a sole test of partnership.

The sharing of profits is prima facie a strong evidence of partnership but the fact that there is sharing of profits between some persons will not automatically make them partners. Therefore receipt by a person of a share of the profits or varying with the profits earned by the business, does not of itself make him a partner with the persons carrying on the business. In particular, there is no partnership-

a) Where a person lent money to persons engaged or about to engage in business, and received a rate of interest varying with the profit.
b) Where a servant or agent is engaged in a business and receives his remuneration as a share of profit
c) Where the widow or child of a deceased partner receives a protion of the profits
d) Where a person has sold his business along with its goodwill and receiveds a portion of the profits in consideration of the sale

Although the sharing of profits of a business is a strong test of partnership, yet whether the relation of partnership does or does not exist must depend upon the real intention and conduct of the parties.

Q. Difference between "Partnership and Co-ownership"

Partnership	Co-ownership
In a partnership each partner is the agent of the others.	Co-owner is not the agent of the other owners. The rights of a co-owner cannot be affected by any act done by the other owners.
Partnership always arises out of agreement.	Co-ownership may arise by agreement or by operation of law. A and B inherit a house from their father. They become co-owners by operation of the law on inheritance.
A partner can transfer his interest, under certain circumstances, but the transferee can never become a partner of the business without the consent of the other partner	A co-owner can transfer his interest to a third party without the consent of the other co-owner.
A partnership always implies a business	Co-ownership may exist without any business
As partnership always implies a business, so in a partnership there must be sharing of profits.	Since co-ownership may exist without any business, the question of sharing profits or losses is immaterial in a co-ownership.
A partner has a lien on the partnership assets for moneys spent by him for the partnership.	A co-owner has no lien under similar circumstances.

Q. Difference between 'Partnership and Club'.

Partnership	Club
Partnership is the relation between two or more persons who have agreed to share the profits of a business carried on by all or any of them acting for all.	A club is an association of persons formed for social purposes.
Under partnership business is the main goal.	It is not a business.
Earning and sharing of profits is only 'prima facie' evidence of Partnership	There is no motive of earning profits and sharing them
A partner is an agent and principal of a firm	A member of a club is not the agent of the other members.
A partner is responsible for the debts of the business	A member is not responsible for the debts of the club unless he participated in the transaction
The death or resignation of a member the existence of the partnership	The death or resignation of a member does not affect the existence of the club

Q. Short notes

- **Limited Partnership**
  A limited partnership includes both general partners and limited partners. A limited partner does not participate in the day-to-day management of the partnership and his/her liability is limited.

- **Sleeping partner**
  A partner in a business who does not play an active role, esp one who supplies capital. Or a partner not sharing in the actual work of a firm.

Law relating to Stamps

Q. Discuss the uses of adhesive stamps.

The following instruments may be stamped with adhesive stamps, namely:-

(a) instruments chargeable with the duty of ten poisha or five poisha, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange and promissory notes drawn or made out of Bangladesh;

(c) entry as an advocate on the roll of the Supreme Court

(d) notarial acts; and

(e) transfers by endorsement of shares in any incorporated company or other body corporate.

Q. How the value of stock and marketable securities are to be determined under the Stamp Act 1899.

According to the Stamp Act 1899, Where an instrument is chargeable with ad valorem duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

Law relating to Societies Registration

Q. Describe the general concept relating to registration of society under the Societies Registration Act.

Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of Societies Registration Act 1860, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies form themselves into a society under this Act.

Memorandum of association

The memorandum of association shall contain the following things (that is to say)-

- the name of the society:
- the objects of the society:
- the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body shall be filed with the memorandum of association.

Registration of societies

Upon the filing of the memorandum and certified copy of the rules and regulations of the society under section 2, the registrar shall certify under his hand that the society is registered under this Act.

Q. What is the "Preamble of Society Registration Act 1860?

Preamble of Society Registration Act 1860

WHEREAS it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education or for charitable purposes.

Q. State the filing procedure of Annual List of Managing Body?

According to Society Registration Act 1860, Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-stock Companies of the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society.

Q. How is the property of a society to be vested?

According to Society Registration Act 1860, The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

Q. Explain the provisions for dissolution of societies and adjustment of this affairs?

According to Society Registration Act 1860, Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Assent required
Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose:

Government consent
Provided that whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of the Government

Transfer of Property

Q. What do you understand by the term Transfer of Property?

"Transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.In this section "living person" includes a company or associations or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

Q. What properties could be transferred under the Transfer of Properties Act?

Property of any kind may be transferred, except as otherwise provided by Transfer of Properties Act or by any other law for the time being in force.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him. A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

(e)A mere right to sue cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military, naval, air-force and civil pensioners of the Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Contract Act, 1872, or (3) to a person legally disqualified to be transferee.
(i) Nothing in this section shall be deemed to authorise a tenant having an untrasnferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

Q. Define Sale of Property? How is Sale of Property made?

"Sale of Property" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Such transfer, in the case of tangible immoveable property or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale:
A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parities.

It does not, of itself, create any interest in or charge on such property.

Contract for sale to be registered:
Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, a contract for sale of any immoveable property can be made only by an instrument in writing and registered under the Registration Act, 1908, whether or not the transferee has taken possession of the property or any part thereof.

In a contract for sale of any immoveable property, a time, to be effective from the date of registration, shall be mentioned for execution and registration of the instrument of sale, and if no time is mentioned, six months shall be deemed to be the time.

Q. Describe the properties which cannot be transferred?

Immoveable Property under a contract for sale not to be transferred
No immoveable property under a contract for shall be transferred except to the vendee so long the contract subsists, unless the contract is lawfully rescinded, and any transfer made otherwise shall be void.

Immoveable Property without Khatian not to be sold
No immoveable property shall be sold by a person unless his name, if he is the owner of the property otherwise than by inheritance, or his name or the name of his predecessor, if he is the owner of the property by inheritance, appears in respect of the property in the latest khatian prepared under the State Acquisition and Tenancy Act, 1950, and any sale made otherwise shall be void.

Immoveable Property under mortgage not to be transferred
No immoveable property under registered mortgage shall be re-mortgaged or sold without the written consent of the mortgagee, and any re-mortgage or sale made otherwise shall be void.

Q. What are the rights and liabilities of buyer and seller of a property?
Or Q. What is the duty of the seller in respect of documents of title of the immovable property sold?

Rights and liabilities of buyer and seller

In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

The seller liabilities

(a) to disclose to the buyer any material defect in the property;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to pay all public charges and rent accrued due in respect of the property up to the date of the sale.

The sellers rights

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;
(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

The buyers liability

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

The buyer rights

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

Q. Short notes on Coercion

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

Explanation - It is immaterial whether the Penal Code is or is not in force in the place where the coercion is employed.

Illustrations

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Penal Code.

A afterwards sues B for breach of contract at Chittagong.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Penal Code was not in force at the time when or place where the act was done.

Q. Short notes on Actionable claim

"Actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent:

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Q. Discuss the relationship between Law and Society?

The term 'society' is used to mean a community or a group of persons, living in any region, who are united together by some common bond. A common bond is formed when some uniformity of factors like nearness, nature of the people, habit, custom, inhibition, beliefs, culture tradition etc. appears. The 'common bond' lead to forming social rules or rules of social behavior. The rules are made by members of the society. Disobedience of the rules is followed by punishment in the form of social disapproval. There is no positive penalty associated with the violation of social rules except excommunication or ostracism.

But 'law' unlike social rules, is enforced by the State. Law, according to Holland is" a rule of external human action enforced by the sovereign political authority". The objective of law is to bring order in the society with a view to enable its members to progress and develop with some sort of security regarding the future.

From the above discussion it follows that although custom, usages and traditions indicate a particular social conduct, law or definitive rules are made to ensure the peace and progress of a society.

Q. Short notes on Doctrine of Lilspendens

'Lis Pendens' generally means "pendency of a suit in a Court". It embodies the principle that the subject matter of the suit should not be transferred to third party during the pendency of the suit. The transferee is bound by the result of the suit in a case when such property is transferred during the pendency of the suit.

This doctrine aims at the final adjudication of the dispute. Nothing new should be brought in a litigation. It helps to prevent multiplicity of suits.

The essential condition for the application of this doctrine is that the right to immovable property must be directly and specifically in question in the suit. The doctrine is mainly based upon the principles of equity, justice and good conscience. It is applicable to all cases between co-heirs. It applies to ex-parte judgements, compromise decrees etc. It applies to both voluntary transfers and involuntary transfers. The doctrine is contained in Section 52 of the Transfer of Property Act.

The suit must be pending in a court of competent jurisdiction. So if the suit is filed in a court not of competent jurisdiction, it is not a suit pending as per Section 52 of the Transfer of Property Act.

Sources of Law

Q. What are the sources of Law? Or short notes on "Sources of Law"
Q. Define "Law" both in commercial and general perspective";
Q. Define Law according to Holland.
Q. "No man is above law"- Discuss or "All are equal in the eye of Law"- Discuss
Q. Discuss the relationship between Law and Society?
Q. What do you understand by the Rule of Law?
Or What are the three Rules of Law?
or What are the benefits of the Rule of Law?
Q. Short notes

- Decree
- National emblem
- National anthem
- Act to God
- Deflation

Constitution

Q. Under what circumstance the High Court Division can pass an order for the infringement of the fundamental rights under Article 102 of the Constitution?
Q. State the various fundamental rights which are being enjoyed by a citizen of Bangladesh.
Q. How may writs are there in the Constitution.
Q. Briefly describe the justification of High Court Division and Appellate Division
Q. Discuss the term "Writ of Habeas Corpus"?
Q. How an ordinance is promulgated?
Q. Define "Fundamental Rights" of a citizen?
Q. What are the five basic needs of life according to the Article 15 of the Constitution of Bangladesh
Q. Briefly describe the concept of Non-party Care Taker Government.
Q. What is the composition of Care Taker Government?
Q. Who is the Head of the Care Taker Government? What procedures are to be followed for the selection of the Chief Advisor under the Constitution of Bangladesh?
Q. State the jurisdiction of High Court Division and Appellate Division under the Supreme Court of Bangladesh
Q. Short notes/Distinction

- Equality and Equity

Law relating to Arbitration

Q. What is arbitration? What is the composition of an arbitral tribunal under the Arbitration Act 2001?
Q. What is the effect of Arbitration?
Q. State the modes of submission of Arbitration
Q. What matters can be referred to Arbitration
Q. What do you understand by the term Arbitration?
Q. Describe different types of Arbitration?
Q. Define Award
Q. What are the essentials of an Award?
Q. When the Court can set aside an Award?
Q.Can an Award be modified or corrected? Briefly explain;
Q. State the powers of an Arbitrator and an Umpire
Q. Short notes
- Umpire and Arbitrator

Law relating to Stamps

Q. Discuss the uses of adhesive stamps.
Q. How the value of stock and marketable securities are to be determined under the Stamp Act 1899.
Q. Short notes
-Method of stamping

Law relating to Societies Registration :

Q. Describe the general concept relating to registration of society under the Societies Registration Act.
Q. What is the "Preamble of Society Registration Act 1860?
Q. State the filing procedure of Annual List of Managing Body?
Q. How is the property of a society to be vested?
Q. Explain the provisions for dissolution of societies and adjustment of this affairs?
Q. Discuss about "Society and Law";

Law relating to Trusts

Q. Define Trust? Write the various duties of the trustees under the Trust Act, 1882?
Q. Discuss the classification of Trust.
Q. Explain the duties and liabilities of a trustees.
Q. He who seeks equity must do equity. - Explain
Q. Short notes
-Trust Deed

Law relating to Transfer of Property

Q. What properties could be transferred under the Transfer of Properties Act?
Q. What do you understand by the term Transfer of Property?
Q. Define Sale of Property?
Q. How is Sale of Property made?
Q. Describe the properties which cannot be transferred?
Q. What are the rights and liabilities of buyer and seller of a property?
Q. What is the duty of the seller in respect of documents of title of the immovable property sold?
Q. What are the rights and liabilities of Buyer and Seller of Property?
Q. Short notes
-Coercion
-Actionable claim

Law relating to Limitation

Q. Critically discuss the provisions of section 5 of the Limitation Act 1908 and indicate the scope of its application.
Q. When limitation extinguishes remedy, not right.
Q. Whether an award be modified or corrected? Explain

Law relating to contract

Q. Void and voidable agreement or contract?
Q. A counter offer can constitute an acceptance of an offer.
Q. An agreement enforceable by law is a contract.
Q. Explain elaborately the different elements of a contract.
Q. "An offer may be expressed or may be implied from the circumstances"-Explain
Q. A contract to contract is not a contract.
Q. A contract of sale for future goods is a valid contract.
Q. Consideration is not necessary in a contract of agency.
Q. What is Contracts uberrimae Fide?
Q. What are the different types of contracts
Q. When is an offer completed?

Q. Define law of contract?
Q. Difference between illegal contract and immoral contract.
Q. Define Quantum Meruit
Q. "A mere statement of intention is not an offer- Do you agree, if so, explain.
Q. Under what circumstances can a person who is not party to contract sue upon it?
Q. Define contract
Q. Consideration is not necessary in a contract of agency.
Q. How and when may an offer be revoked?
Q. When is an offer completed
Q. What remedies are available to an aggrieved person in case of breach of contract?
Q. An agreement entered into with a minor may ratified on his attaining the age of majority.
Q. "All contracts are agreements but all agreements are not contracts"-Explain
Q. An agent is a mere connecting link between the principal and a third party.
Q. A Principal can always revoke an Agent's authority.
Q. An auctioneer can refuse to accept the highest bid;
Q. A sleeping partner is not liable to the third parties for the debts of the firm.
Q. Define Bailment? Or What do you understand by bailment?
Q. A minor is always allowed to plead minority- Explain
Q. What are the duties of a Bailee?
Q. What do your understand by bailment? How a pledge defers from a bailment?
Q. Explain the different classes of Agents.
Q. What are the duties of an agent to his principal?
Q. How a pledge differs from a bailment?
Q Can a non-owner make a valid pledge?
Q. Define by way of Pledge or Pawn
Q. When can a non-owner make a valid pledge?
Q. How a Bailment is terminated?
Q. What are the rights of a Pawnee?
Q. What do you mean by consideration?
Q. "Past consideration is no consideration" Comment
Q. No Consideration, no contract". State the exceptions to the rule
Q. Critically discuss the essential elements of consideration?
Q. State the circumstances in which a contract without consideration treated as valid; or Describe with examples the agreements which can be valid without consideration.
Q. "An agreement without consideration is void unless it is in writing and registered" Explain
Q. Under what circumstances can a person who is not party to contract sue upon it?
Q. A promise against a promise is a good consideration

Q. What is an acceptance?
Q. What are the legal requirements of a valid acceptance
Q. A, a famous artist, promised to paint a picture for B by a certain day on payment of Tk.50,000/-. Unfortunately A died before the day. Can this contract be enforced by A's representative or by B?
Q. State the duties of an agent to the principal.
Q. Difference between
- Bailor and Bailee;
- Illegal contract and immoral contract
- Voidable and void contract

Q.Can "A" recover the amount promised to him by "B" in the following cases:
I) B has promised to pay A Tk.10,000 for his horse which had died before the contract.
II) C, a minor, promised to pay D Tk.20,000 for his car.
III) E promised to pay his son E Tk.50,000 if he would not marry J.

Q. Short notes
- Free consent
- Agent
- Bailment
- Charter Party
- Undue influence
- Indemnity
- Quasi contract
- Minor and Major
- Counter offer;
- Mercantile Agent
- Illegal contract
- Breach of contract

Law relating to Sale of Goods

Q. What do you mean by the rule of 'Caveat Emptor'? State its exceptions and the modern trend in the society?
Q. What are the essentials of a contract of Sale?
Q. What do you understand by a Contract of Sale of Goods?
Q. State the different types of goods.
Q. Discuss on the classification of Goods.
Q. What are the rights and liabilities of buyer and seller of a property?
Q. What do you understand by Conditions and Warranties?
Q. Explain the difference between a Condition and Warranty?
Q. When a Condition can be treated as a Warranty?
Q. Who is an unpaid seller? Describe the rights of an unpaid seller?
Q. Under what circumstances can a breach of condition be treated as a breach of warranty?
Q. Explain the implied condition and guarantees under the Sale of Goods Act, 1931.
Q. State the differences between the following
- Sales and Hire-purchase
- Sales and Agreements to Sell
- Hire-purchase and Installment Sale
- Condition and Warranty

Q. Short notes
- -Sale and bailment
- - Condition and Warranty
- -Caveat Emptor
- -Doctrine of Supervening impossiblity
- -Power of Attorney
- -Guarantee
- Award
- lien

Law relating to Negotiable Instruments

Q. Define a Negotiable Instrument.
Q. What are its characteristics?
Q. What is the effect of crossing a cheque with the words " Not negotiable" written across its face?
Q. Post dated cheque is a valid negotiable instrument.
Q. State the essential features or characteristics of a negotiable instrument.
Q. Explain who is a "Holder in due course." State the rights and liabilities of a 'Holder in due course' under the Negotiable Instrument Act. Or What do you mean by Holder in Due Course?
Q. Shafiq signed a document in these terms. - "in consideration of the loan of Tk.50,000 from Rafiq, shafiq agrees to repay Rafiq the sum of Tk.50,000on or before July 31, 2012." Is the document a valid promissory note?

Q. A minor borrowed Tk. 10,000 from Mrs. Salina on a fraudulent representation that he was a major and he spent it. Can Mrs. Salina sue him for the return of the amount.
Q. What is the purpose of crossing a cheque? State the various ways in which a cheque can be crossed?
Q. What is a Bill of Exchange?
Q. State the principal features of Bill of Exchange./ essential elements of Bill of Exchange?
Q. Show the distinction between Bill of Exchange and Cheque.
Q. Who can accept a Bill of Exchange?
Q. Who is the Drawee in case of need?
Q. what punishment is prescribed for dishonor of a cheque for insufficiency of fund in the account? What conditions need to be observed before filing a compliant under the Negotiable Instrument Act?
Q. T/F Any material alteration of a negotiable instrument renders the same void
Q. Difference between

- Pay order and Demand Draft.
- Promissory Note and a Bill of Exchange
- A Bill of exchange and a Cheque
- Cheque crossed generally and cheque crossed specially

Q. Short notes
-Fraud and misrepresentation
-Cheque and Promissory note
-Endorsement;
-Holder in due course
- Fictitious Bill

Law relating to Partnership

Q. "A partner is an agent and principal of a firm." Do you agree? Explain briefly.
Q. What do you understand by the term partnership?
Q. What is Partnership Property.
Q. For what purposes can it be used?
Q. "Sharing of profits is only 'prima facie' evidence of Partnership"- Discuss
Q. What are the various classes of partners?
Q. What do you understand by Partnership at will?
Q. Explain the doctrine of "holding out" in reference to the relation of partners to third parties.
Q. Although registration of firms is not compulsory, firms are usually registered. What are the disadvantages for non-registration of a firm under the Law of Partnership?
Q. What are the different classes of partnerships
Q. Can a partner of a firm be considered as an agent of other partner?
Q. Is registration obligatory for a firm under the Partnership Act? What are the disadvantages of non-registration of a firm?
Q. The partnership firm has no legal existence apart from the partners.
Q. State the position and rights of a minor under the Law of Partnership
Q. T/F Sharing of profit is an essential element of partnership, it is not a sole test of partnership.
Q. Difference between

- Partnership and Club.
- Partnership and Co-ownership

Q. Short notes

- Partnership and Co-ownership
- Limited Partnership
- Sleeping partner
- Unenforceable aggrement