

Descriptive Questions with Answers

THE LAW OF CONTRACTS

1. What is 'Proposal' as defined under the Indian Contract Act?

Ans. : When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal : S. 2(a).

2. What is an offer?

Ans. : The term "proposal" of the Indian Contract Act is synonymous with the term "offer" of English Law.

3. What is an invitation to offer? Give 2 examples of invitation to offer.

Ans. : An offer must be distinguished from an invitation to offer. Many statements which seem to be offers are, very often, merely invitations to offer. Thus, the following are not offers, but merely invitations for an offer : quotations of the usual prices of a trader, quotations of the lowest price in answer to an enquiry, a catalogue of goods or books, and advertisement for tenders, or an advertisement of an auction. It is the purchaser who makes the offer, and it is for the trader, book-seller or the auctioneer to accept the offer or to reject it.

4. Does an article displayed in a shop with a price tag amount to an offer?

Ans. : A sees an article marked ₹ 50 in B's shop. He tells B he will buy it, and offers him ₹ 50. B says that he does not wish to sell that article. It will be seen that here there is no contract at all. If a customer enters the shop, tenders the price and demands the article, the shop-keeper is not bound to sell it to him. In such cases, the price-tag is not an offer, but an invitation to offer. The demand of the customer is the offer, which the shopkeeper is free to accept or reject as he pleases, and therefore, there is no contract.

5. What is acceptance of an offer?

Ans. : S. 2(b) defines acceptance thus : When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be "accepted".

In the case of reciprocal promises, each party gives a promise, in return for the other's promise, e.g., a promise to sell and purchase between A and B. It will be seen that, in such a case, each promise is a consideration for the other.

17. What is alternative promise?

Ans. : An alternative promise is one which offers the choice of one of two things.

When the promisee is given an alternative or choice of one of two things, the promise is said to be alternative. If A promises to pay B ₹ 1,000 in return for B's promise to sell him 50 maunds of rice *or* 100 maunds of wheat, B's promise is an alternative one. Either of the alternatives is perfectly valid; so, if B delivers either rice *or* wheat, the obligation would be fulfilled.

18. What is "consideration" as defined under the Indian Contract Act?

Ans. : S. 2(d) of the Act defines consideration thus :

When, *at the* desire of the promisor, the promisee or any other person

(i) has *done, or abstained* from doing, *or*

(ii) *does or abstains* from doing, *or*

(iii) *promises to do, or to abstain* from doing— something —

such *act, abstinence or promise* is called a *consideration* for the promise.

In the ordinary course, when a person makes a promise to another, he does so with an intention of deriving some *advantage* which the person to whom the proposal is made is capable of conferring upon him.

19. When consideration is absent, what is the effect on the validity of the contract?

Ans. : "A consideration of some sort or other is so necessary to the forming of a contract, that a *nudum pactum*, or agreement to do or pay something on one side, *without* any compensation on the other will *not* at law support an action; and a man *cannot* be compelled to perform it. The law supplies no means nor affords any remedy to compel the performance of an agreement made *without* consideration. If I promise a man 100 pounds *for nothing*, he neither doing nor promising anything in return or to compensate me for my money, *my promise has no force in law*". In the absence of consideration, a promise or undertaking is *purely gratuitous*, and however sacred and binding in honour, it creates no legal obligation.

20. What is the doctrine of privity of contract?

Ans. : If *A* and *B* enter into a contract, and *A* commits a breach thereof, it is only *B* who can, in normal circumstances, sue *A*. *B*'s friend *C*, has no right to do so. The reason is that there is a *privity of contract* between *A* and *B*, a *legal bond* which binds them in law, whereas there is no such bond between *A* and *C*.

The doctrine of privity of contract creates a tie or *vinculum legis*, a bond which is personal to the parties. Other parties (*not* being their representatives) are *neither* bound by the contract, *nor* entitled under it. Thus, the doctrine prevents a third party from enforcing a contract. Applying the same logic, it also prevents the contracting parties from enforcing obligations against a stranger, *i.e.* a third party. Thus, a contract between *A* and *B* *cannot* be enforced by *C* (– as stated above –); equally a contract between *A* and *B* *cannot* impose any liability on *C*.

21. Mention the different kinds of Consideration.

Ans. : Various kinds of consideration are — (1) Executed, (2) Executory, (3) Past, (4) Unreal, (5) Unlawful.

22. What is an Executed Consideration?

Ans. : An *executed* consideration is something actually *done, forborne, or suffered contemporaneously* with the making of the contract. The offer of a reward for information accepted by the supply of the information required, the offer of goods accepted by their use or consumption, are illustrations of *executed consideration*.

23. What is an Executory Consideration?

Ans. : An *executory* consideration is a promise to do or forbear from doing something *in the future*. Mutual promises to marry, a promise to do work in return for a promise of payment, are illustrations of executory consideration. A consideration is said to be *executory* when *there is a promise for a promise*.

24. What is a Past Consideration?

Ans. : *Past* consideration is something wholly done, forborne, or suffered *before* the making of the agreement.

25. Explain Unreal Consideration?

Ans. : A consideration for a promise is said to be 'unreal' when it subsists *merely in words, and not in fact*. If *A* promises to pay *B*, ₹ 1,000 on particular day, in

consideration of a promise by *B* to pay *A* ₹ 100 at the same time, the consideration is 'unreal' or 'illusory', and the promise will be regarded as merely a gratuitous promise by *A* to pay *B*, ₹ 900. An apparent consideration which has no legal value is no consideration at all.

26. What are Valid Agreements?

Ans. : These are agreements that are enforceable at law. Such an agreement is fully operative in accordance with the intention of the parties and the law. Such an agreement satisfies *all* the conditions of a *valid contract* under the Act.

27. Explain Voidable Agreements?

Ans. : A *voidable* agreement is one which is valid as long as it is *not* "avoided" by the party entitled to do so. Thus, it is an agreement which is enforceable at law at the option of *one* of the parties to such agreement, but *not* at the option of the other. Thus, agreements induced by coercion, undue influence, fraud or misrepresentation are *voidable*. It is for *the party upon whom* such fraud has been practised to set up such fraud and have the agreement set aside by the court; if he does *not*, (within the period prescribed by the law of limitation), the agreement stays as a legal binding contract.

28. What are Unenforceable Agreements?

Ans. : An otherwise valid contract may be *unenforceable* at law, if some rule of law renders it incapable of proof because of some technical defect, *e.g.*, a promissory note which is unstamped *or not* sufficiently stamped. Such a contract is otherwise valid, but *cannot* be proved and enforced in a Court of law.

29. What is meant by void agreement?

Ans. : A void agreement is one which has no legal effect at all, and is therefore *not enforceable* at law. Thus, agreements of which the object or consideration is unlawful, *or* which are in restraint of trade or of marriage or of legal proceedings *or* which are by way of wager, are all *void*. No legal rights flow from such an agreement, and consequently, no action can be taken under such an agreement in a Court of law. In the eyes of law, *there is no agreement at all*. Such agreements are *void ab initio*, *i.e.* *void from the very beginning*.

47. Write short note on : Modes of revocation of proposal.

Ans. : S. 5 lays down as to *when* a proposal can be revoked. S. 6 provides *how* it can be revoked, and can be analysed as follows:

A proposal is revoked in one of the following *four* ways:

1. By the communication of *notice of revocation* by the proposer to the other party.
2. By the *lapse* of the *time* prescribed in such proposal for its acceptance *or*, if no time is prescribed, by the lapse of a *reasonable* time, without communication of the acceptance.
3. By the *failure* of the acceptor to *fulfil a condition* precedent to acceptance.
4. By the *death or insanity* of the *proposer*, if the fact of his death or insanity comes to the knowledge of the acceptor *before* accepting.

48. "All agreements are not contracts but all contracts are agreements."

Discuss.

Ans. : All contracts are agreements, but all agreements *are not contracts*. To be a contract, an agreement must be enforceable at law. Thus, *A* and *B* may agree to smuggle gold into India. This may be an *agreement* between them, but it will *not* be a *contract*, as it is *not enforceable* at law.

It is important to note that one *cannot* speak of a "*void contract*". By its very definition, a contract is an agreement which is enforceable by law. Hence, it would be a *contradiction in terms* to talk of a "*void contract*". The right term to use in such cases would be *void agreement*.

Hence, agreements may be *valid* or *void*; but contracts are *valid* (*i.e.*, enforceable by either party) or *voidable* (*i.e.*, enforceable by only one of the parties, at his option.)

49. What are the essential elements of a valid contract?

Ans. : Under S. 10, all agreements are contracts, if they are made :

- (1) by the *free consent*
- (2) of *parties competent to contract*
- (3) for a *lawful consideration* and a *lawful object*, and
- (4) are *not expressly declared to be void*.

50. Who is competent to contract?

Ans. : S. 11 lays down that a party is *competent to contract, i.e.,* if —

- (i) he is of the age of majority,
- (ii) he is of sound mind, *and*
- (iii) he is *not disqualified* from contracting by any law to which he is subject.

51. At what age does a person become competent to contract?

Ans. : According to the Indian Majority Act, a *minor* is one who has *not* completed 18 years of age. *Earlier*, in the case of minors for whom a guardian was appointed, the status of minority continued until the age of *twenty-one* years under the Indian Majority Act. However, after a recent amendment of that Act, this is no longer so. In other words, *today*, the Act fixes the age of majority at eighteen years — irrespective of whether or not a guardian has been *appointed for the minor*.

52. On attaining majority, can a person ratify an agreement made by him during his minority?

Ans. : Since a minor's contract is *void ab initio*, it follows that there can be no question of *ratifying* it; and hence a promise by a person on *attaining majority* to repay money lent and advanced to him *during minority* cannot be enforced, as the consideration given during minority is no consideration at all.

53. Can a minor enter into a contract of Partnership?

Ans. : Under Sec. 30 of the Partnership Act, a minor *cannot* enter into a contract of partnership, though he may be admitted to the benefits of the partnership, with the consent of all the partners. Such a minor *cannot* be made *personally liable* for obligations of the firm, but only the *share* of such a minor in the *property* of the firm is liable.

54. Who is said to be of sound mind under Indian Contract Act?

Ans. : Under S. 12, a person is said to be of *sound* mind for the purpose of making a contract if, at the time when he makes it, he is capable (i) of *understanding it, and* (ii) of *forming a rational judgment* as to its *effect* upon his interests. Besides, a person who is *usually* of unsound mind, but *occasionally* of sound mind, he may make a contract *when he is of sound mind*. Likewise, a person who is usually of sound mind, but *occasionally* of unsound mind, *may not* make a contract when he is of unsound mind.

55. Write a short note on : Unsoundness of mind.

Ans. : In *India*, it is *not necessary* to prove that the person dealing with the lunatic *knew* of his being a person of unsound mind; so, the party pleading unsoundness of mind has the burden upon him to prove such unsoundness to have existed at the time of making the contract. Therefore, a lunatic's contract made during a *lucid interval* is *valid*. The presumption is primarily in favour of *sanity*. The contract of a lunatic, like that of a minor, is *absolutely void*.

In *England*, a person of unsound mind is *personally* liable for *necessaries* supplied to him. In *India*, *only his property* would be liable.

56. What is a government contract?

Ans. : Under Art. 299 of the Constitution of India, all contracts made in the exercise of the executive power of the Union or of the State are to be made in the name of the *President* or the *Governor* respectively, and are to be executed on behalf of the President or the Governor by such persons as he may direct or authorise. However, the President or the Governor is *not personally liable* under such contracts.

57. Write the different kinds of Government Contracts.

Ans. : The following are the kinds of contracts usually entered into by the government:

- (i) Service contracts
- (ii) Contracts with suppliers of goods and services (to the government)
- (iii) Contracts for supplies by the government to private parties.
- (iv) Contracts with banks and financial institutions
- (v) Contracts with persons whose tenders have been accepted by the government
- (vi) Contracts for construction and maintenance of roads, flyovers, bridges, buildings, school, hospitals, *etc.*

58. When is consent said to be free?

Ans. : Under S. 14, consent is said to be *free*, when it is *not caused by*—

- (i) Coercion — as defined in S. 15;
- (ii) Undue influence — as defined in S. 16;
- (iii) Fraud — as defined in S. 17;

(iv) Misrepresentation — as defined in S. 18; *or*

(v) Mistake — subject to the provisions of Ss. 20, 21 & 22.

59. What is free consent?

Ans. : Free consent not only consent, but free *consent*, is *necessary* to complete the validity of a contract. Where there is *no consent*, there can be *no contract* at all. Where there is *consent*, but no *free consent*, there is a contract, which is *voidable* at the option of the party whose consent was *not free*. In other words, when there is no consent, the agreement is *void*. However, where there is consent, but the consent is *not free*, the contract is *voidable*.

Consent is said to be free when it is *not caused by* (i) coercion, *or* (ii) undue influence, *or* (iii) fraud, *or* (iv) misrepresentation, *or* (v) mistake. Consent is said to be so caused when it would *not* have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake. If the consent is given under any of the first four circumstances, the contract is *voidable* at the option of the party whose consent was so caused. If the consent is caused by *mistake of fact* of both the parties, then the agreement is *void*. It is thus essential for the formation of a valid contract that there should be *free consent* of *both the parties*.

60. What is coercion as defined under the Indian Contract Act?

Ans. : According to S. 15, coercion is—

(i) the *committing* of any act *forbidden* by the Indian Penal Code; *or*

(ii) the *threatening* to commit any act forbidden by the Indian Penal Code; *or*

(iii) the *unlawful detaining* of any property to the prejudice of any person whatsoever; *or*

(iv) the *unlawful threatening* to detain any *property* to the prejudice of any person whatever;

— with the *intention* of causing any person to *enter* into an agreement.

61. What is “undue influence” as defined in the Indian Contract Act?

Ans. : The second factor which invalidates consent is *undue influence*. S. 16 lays down that a contract is said to be induced by “undue influence”, where the relations subsisting between the parties are such that one of the parties (i) is in a position to *dominate the will* of the other, *and* (ii) uses that position to obtain an *unfair advantage* over the other.

71. What are the consequence when consent to an agreement is caused by coercion, fraud or misrepresentation?

Ans. : Under S. 19, a party whose consent is caused by fraud or misrepresentation may *insist* that the contract shall be performed, and that he shall be put in the position in which he would have been *if the representation made had been true* : S. 19. S. 19 also lays down that if such consent was caused by misrepresentation *or* by silence fraudulent within the meaning of section 17, the contract nevertheless, is *not voidable*, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

However, a fraud or misrepresentation which did *not* cause the consent to a contract of the party on whom such fraud was practised, *or* to whom such misrepresentation was made, does *not* render a contract voidable.

72. What is the effect of a mutual mistake of fact on an agreement?

Ans. : Both the parties to an agreement are under a mistake as to a matter of *fact essential to the agreement*, the agreement is *void*.

73. What is the effect of mistake of law under the Indian Contract Act?

Ans. : Although a mistake of *fact* vitiates a contract, a mistake of *law* does *not*. This is based on the maxim that ignorance of law is no excuse. *Ignorantia juris non excusat*. But it must *not* be supposed that relief can *never* be given in respect of mistake of law. *In the following three cases, a mistake of law would vitiate the contract:*

1. Private rights of property, though they are the result of the rules of law or depend upon rules of law applied to the construction of legal instruments, are generally to be considered as matters of *fact*.
2. If a contract is brought *about* by a *wilful misrepresentation of law*, it can be set aside.
3. Mistake as to any *foreign law* is a mistake of *fact* and as such, it *vitiates* a contract.

74. Distinguish between Mistake of Fact and Mistake of Law.

Ans. : A mistake of *fact* will *vitate* a contract; a mistake of *law* does *not*, unless it is one of the three kinds mentioned above.

Secondly, where there is mutual mistake as to an existing fact material to the agreement, the contract is *void* : Ss. 20 and 22. Where there is a mistake of *law*, the contract is *not voidable*, unless the mistake of law falls within one of the three exceptions discussed above : S. 21.

75. When is consideration of an agreement said to be lawful?

Ans. : Under S. 23, the *consideration or object* of an agreement is lawful, unless—

- (i) it is *forbidden* by law; *or*
- (ii) is of such a nature that, if permitted, it would *defeat the provisions* of any law; *or*
- (iii) is *fraudulent*; *or*
- (iv) *involves or implies injury* to the person or property of another; *or*
- (v) the Court regards it as *immoral or opposed to public policy*.

76. Write a short note on : Immorality of an object.

Ans. : Of all the kinds of agreements, those which are tainted with *immorality* present little difficulty. The immorality here alluded to is *sexual immorality*. It will readily be seen that agreements *contra bonos mores* (against good morals) *or* those involving *social immorality or prostitution* are frowned upon by law.

All agreements in violation of *morality* and founded upon consideration *contrary to public morals* (*contra bonos mores*) are *void*. An agreement which is made upon an *immoral condition, or for an immoral purpose*, is unenforceable.

77. Write a short note on : Agreements against public policy.

Ans. : The doctrine of 'public policy' covers a very wide ground. It includes *political, social or economic grounds of objection*, outside the common scope of morality. Public policy is, in its nature, so uncertain and fluctuating, varying with the habits and fashions of the day, with the growth of commerce, and usages of trade, that it is difficult to determine its limits with any degree of exactness. This rule may, however, be safely laid down, that wherever any contract *contravenes any established interest of society*, it is *void* as being against public policy. At the same time, it may be noted that the enlargement of trade and the growth of cities, with the new and various relations created thereby, have rendered many species of contracts valid, which were formerly considered to be against public policy.

84. What is the effect of an agreement in restraint of marriage?

Ans. : Under S. 29, agreements, the meaning of which is not *certain*, or *capable* of being made certain, are void.

85. What is a Wagering agreement?

Ans. : Wager is defined as an agreement between two parties to the effect that if a given event is determined *one* way, the *first* of them shall pay a certain sum to the *other*, and in the *contrary* event, the *latter* shall pay that amount to the *first*. A wagering contract is thus a contract "to give money or money's worth upon the determination or ascertainment of an *uncertain* event".

86. What is a Contingent contract?

Ans. : A "contingent contract" is a contract to *do or not* to do something, if some event *collateral* to such contract *does or does not* happen.

The right created may be one which, the parties agree, would be *enforceable only on the happening of some future event* as to which neither of the parties makes any promise, and which is, therefore, *collateral* to the contract. Such contracts are termed "*contingent*".

87. What are the rules as to enforcement of Contingent contracts?

Ans. : Contingent contracts *to do or not to do* anything if an uncertain future event *happens, cannot be enforced* by law unless and until that event has happened. If the event becomes *impossible*, such contracts become *void*.

88. State the two essentials of a valid tender of performance.

Ans. : In order to be a valid tender, it must fulfil the following three conditions:

1. It must be *unconditional*.
2. It must be made at *proper time* and *place*, and under such circumstances as to give the other party a reasonable opportunity of *ascertaining* that the person offering to perform is able and willing *there and then*, to do the whole of that which he has promised.
3. If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing *offered is the thing which the promisor is bound by his promise to deliver*. Thus, a tender

receive the amount *under protest*. His protest *cannot* prevail against the debtor's desire, and he will be *bound* by the debtor's appropriation despite his protest. Failing any express appropriation *by the debtor*, the right of appropriation shifts to the *creditor*, and if he does not exercise it, the payment is to be applied in discharge of the *debts in order of time*, even if such debts are time-barred.

This is, *in short*, the law as to *appropriation of payments*. The question of appropriation will arise in *three* cases:

1. Where the *debt* to be discharged is *indicated* : S . 59.
2. Where such debt is *not indicated* : S . 60.
3. Where *neither* party appropriates : S . 61.

94. What are the various modes of discharge of a contract?

Ans. : According to the *Indian Contract Act*, a contract may be discharged in the following *eleven* ways:

1. By performance.
2. Where performance is *dispensed with or excused* : (S. 37)
3. By refusing tender of *performance* : (S. 38)
4. By one party refusing to perform : (S. 39)
5. By the act becoming *impossible* or *unlawful* : (S. 56)
6. By novation, rescission or alteration of contract : (S. 62)
7. By waiver : (S. 63)
8. By accord and satisfaction : (S. 63)
9. By rescission of a voidable contract : (S. 64)
10. By the promisee failing to afford facilities for performance : (S. 67)
11. By operation of law.

95. What is Novation?

Ans. : S. 62 deals with the doctrine of *novatio* (or novation). The term *novation* has been thus defined by the House of Lords : "That, there being a contract in existence, some new contract is *substituted* for it, either between the same parties or between different parties, the consideration being mutually the *discharge* of the old contract". In India, there is *novatio* when the *parties* are changed, or the *nature of the obligation* is changed.

96. What is the obligation of a person who has received any advantage under a contract which becomes void?

Ans. : S. 65 lays down that when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such an agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

97. Briefly discuss : "Certain relations resembling those created by contract" dealt with in the Indian Contract Act.

Ans. : Contracts result from the will of the parties, expressed with a view to creating legal obligations. But, in some cases, even without the volition of the parties, obligations resembling those created by contract are imposed by law. Though, in fact, there is no contract between the parties, the law deems such obligations to arise, as would arise as if there were a contract. Such obligations are said to arise *quasi-ex-contractu*, and such cases are, for want of a better name, classified in English law as quasi-contracts. They are not contracts, as the obligation does not arise from volition of the parties; there is no agreement, not even a formal expression of will. The essentials for the formation of a contract are absent (- for instance, there is no proposal and no acceptance -); but as the results resemble those of a contract, they are called *quasi-contracts*.

98. State the types of Quasi-contracts.

Ans. : Ss. 68 to 72 of the Act deal with five types of quasi-contracts, as under:

1. Claim for necessities supplied to a person incapable of contracting or on his account (S. 68)
2. Reimbursement of a person paying money due by another in the payment of which he is interested (S. 69)
3. Obligation of a person enjoying the benefit of a non-gratuitous act (S. 70)
4. Rights and liabilities of a finder of goods (S. 71)
5. Liability of a person to whom money is paid or a thing is delivered by mistake or under coercion (S. 72)

99. What are the different types of injunctions?

Ans. : Injunctions are of two types : temporary and permanent. A permanent injunction (which is governed by the Specific Relief Act) can be issued when the

final order or decree is passed, i.e. at the end of the suit. On the other hand, a temporary injunction (which is governed by the Code of Civil Procedure) can be issued at any stage of the suit.

100. Explain Liquidated Damages.

Ans. : The stipulated sum is to be regarded as liquidated damages, if it be found that parties to the contract conscientiously tried to make a genuine pre-estimate of the loss which might be occasioned to them in case the contract was broken by any of them. Hence, liquidated damages are "a genuine covenanted pre-estimate of damages". Liquidated damages are an assessment of the amount which, in the opinion of the parties, will compensate the wronged party for the breach.

THE SPECIFIC RELIEF ACT

1. Name the various Specific Relief available under the Specific Relief

Act.

Ans. : The following are the seven kinds of specific relief available under the

Act:

- (i) Recovery of possession of property (Ss. 5-8)
- (ii) Specific performance of contracts (Ss. 9-25)
- (iii) Rectification of instruments (S. 26)
- (iv) Rescission of contracts (Ss. 27-30)
- (v) Cancellation of instruments (Ss. 31-33)
- (vi) Declaratory decrees (Ss. 34 & 35)
- (vii) Injunctions (Ss. 36-42)

2. Define 'Obligation' as per The Specific Relief Act.

Ans. : "Obligation" includes any duty enforceable by law.

3. Define 'Settlement' as per The Specific Relief Act

Ans. : "Settlement" means an instrument, other than a will or codicil as defined by the Indian Succession Act, whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of.

4. Define 'Trust' as per The Specific Relief Act.

Ans. : 'Trust' has the same meaning as in S. 3 of the Indian Trusts Act, and includes an obligation in the nature of a trust within the meaning of Chapter IX of that Act.

5. Who is a 'Trustee' as per The Specific Relief Act?

Ans. : "Trustee" includes every person holding property in trust.

6. Explain the provisions of the Specific Relief Act relating to recovery of possession of specific immovable property.

Ans. : The owner of specific immovable property can recover possession of such property in the manner provided by the CPC.

But, if any person is forcibly dispossessed of immovable property (- whether such person *is or is not* the owner thereof -), he can recover possession thereof under the Specific Relief Act, if the following *six* conditions are satisfied:

- (1) He should have been in possession of the immovable property.
- (2) Thereafter, he should have been dispossessed of such property.
- (3) Such dispossession should have been without his consent.
- (4) Such dispossession should have been otherwise than in due course of law.
- (5) The dispossession should *not* have been by the Government.
- (6) He must file the suit within *six months* from the date of dispossession.

In such cases, the question of title is irrelevant, and the court does *not* go into that question.

7. What is the limitation period for filing a suit under S. 6 of the Specific Relief Act?

Ans. : The suit should be filed *within six months* from the date of such dispossession.

8. Against whom can a suit not be instituted under S. 6 of the Specific Relief Act?

Ans. : No suit can be filed under S. 6 against the Government. However, this does *not* mean that the Government can dispossess a person in possession, except under due process of law.

(iv) where only a *part* of the contract is sought to be rescinded, and such part is *not severable* (i.e., it *cannot* be separated) from the rest of the contract.

25. When can one apply for rescission of a contract?

Ans. : For the purposes of *clause (a)* above, whenever consent of a party to the contract has been brought about by any of the factors that make a contract *voidable* under the Indian Contract Act, 1872, such a party can avoid the contract by filing an appropriate suit for this purpose. Thus, if he can show that his contract is covered by S. 19 or S. 19-A of the Indian Contract Act, he would be entitled to rescind the contract under S. 27 of the Specific Relief Act.

26. Under the Specific Relief Act, what is the alternate relief in a suit for specific performance?

Ans. : Whenever a plaintiff sues for specific performance of a contract in writing, he can pray, *in the alternative*, that if the contract *cannot* be specifically enforced, it may be rescinded and delivered up to be cancelled, and the Court may order accordingly.

27. Under what circumstances can a person sue for cancellation of an instrument?

Ans. : Under S. 31, any person against whom a written instrument is either *void* or *voidable*, may sue to have it adjudged void or voidable, if he has *reasonable apprehension* that such an instrument may cause serious injury if left outstanding.

28. Explain in detail the provisions regarding cancellation of instruments under the Specific Relief Act.

Ans. : Any person against whom a written instrument is void or voidable may sue to have it adjudged void or voidable, if he has reasonable apprehension that such an instrument may cause serious injury if left outstanding. The court may, in its discretion, adjudge such instrument as void or voidable and order it to be delivered up and cancelled.

Where an instrument is evidence of different rights or of different obligations, the court may, in a proper case, cancel it in part and allow it to stand as far as the residue is concerned.

In such cases, the court may require the party to whom such relief is granted to

restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.

29. How is cancellation of an instrument different from rescission of a contract?

Ans. : Rescission of a contract is also a relief available (under S. 27) to a person who is *not* a party to the contract. However, there are *four* material points of difference between the two, as under:

- (i) S. 27 is limited to contracts, whereas S. 31 applies to *all written instruments*.
- (ii) Whereas S. 31 applies only to instruments in writing, S. 27 covers all contracts (except as regards territories to which the Transfer of Property Act does *not* apply).
- (iii) Under S. 27, there is no requirement of reasonable apprehension of serious injury to the plaintiff, which is an essential ingredient of S. 31.
- (iv) Whereas S. 27 covers *voidable* contracts, S. 31 covers written instruments which are *void* or *voidable*.

30. Which instruments can be partially cancelled?

Ans. : In some cases, it may be *neither just nor equitable* to cancel the entire instrument. S. 32, therefore, provides that where an instrument is evidence of different rights or of different obligations, the Court may, in a proper case, cancel it in part - and allow it to stand as far as the residue is concerned.

31. What is a declaratory decree under the Specific Relief Act?

Ans. : If any person is entitled to any legal character or any right to any property, he may institute a suit against any person who denies, or is interested in denying, such character or right. The court may, in its discretion, make a declaration in such suit that the plaintiff is so entitled.

32. What is the purpose of a declaratory decree?

Ans. : The *main object* of S. 34 is to dispel a cloud cast upon the title or legal character of the plaintiff. Though there may *not* be any immediate danger which threatens such title or legal character, yet it is equitable that such a person should be able to seek the assistance of the Court to get a declaration, so that he can peacefully enjoy the title or legal character without fear of future disturbance.

36. What is a temporary injunction?

Ans. : *Temporary or interim injunctions* are those which remain in force until a specified time e.g., for 10 days, or till the date of the next hearing of the case, or until further orders of the Court. Such injunctions can be granted *at any stage of the suit*, and are governed by Order 39 of the Code of Civil Procedure (CPC), 1908, and *not by the Specific Relief Act.*

37. What are Permanent injunctions?

Ans. : *Permanent injunctions*, on the other hand, are contained in the decree passed by the Court *after* fully hearing the merits of the case. Such an injunction perpetually prohibits the defendant from asserting a right or committing an act which would be contrary to the plaintiff's rights.

38. Differentiate between temporary and permanent injunctions

Ans. :

Temporary Injunction	Permanent Injunction
1. It is passed during the pendency of the suit.	1. It is passed at the end of the suit.
2. It continues till a time specified by the Court.	2. It remains in force for all time to come.
3. Its effect is to preserve <i>status quo</i> .	3. Its effect is to protect the rights of the plaintiff.
4. It is governed by Order 39 of the Civil Procedure Code.	4. It is governed by Ss. 38-42 of the Specific Relief Act.

39. What is a perpetual injunction?

Ans. : Subject to the other provisions of the Act, a perpetual injunction may be granted, *at the discretion of the Court*, to prevent the breach of an obligation existing in the plaintiff's favour, whether expressly or by implication.

40. When can a perpetual injunction be granted?

Ans. : Court may grant a *perpetual injunction* to the plaintiff in the following *four cases*:

- (a) where the defendant is a trustee of the property for the plaintiff;