

## SECTION – 5

### QUESTION-2.

#### ANSWER:-

#### **Important characteristics of Negotiable Instruments are:**

**Property:** The possessor of negotiable instrument is acknowledged to be the owner of property contained therein. Negotiable instrument does not simply give ownership of the instrument but right to property as well. The property in negotiable instrument can be moved without any formality. In the case of bearer instrument, the possessions pass by meager delivery to the transferee. In case of order instrument, endorsement & delivery are necessary for transfer of property.

**Title:** The transferee of negotiable instrument is called 'holder in due course.' A genuine transferee for value is not affected by any flaw of title on the part of transferor or of any of the previous holders of instrument.

**Rights:** The transferee of negotiable instrument can take legal action in his own name, in case of dishonour. A negotiable instrument can be reassigned any number of times till it attains maturity. The holder of instrument need not give notice of transfer to the party legally responsible on the instrument to pay.

**Presumptions:** Certain presumptions are applicable to all negotiable instruments i.e., a presumption that deliberation has been paid under it. It is not essential to write in promissory note the words 'for value received' or alike expressions for the reason that the payment of consideration is acknowledged. The words are typically included to generate additional substantiation of consideration.

**Prompt payment:** A negotiable instrument facilitates the holder to anticipate prompt payment because dishonour refers to the ruin of credit of all persons who are parties to the instrument.

**Contract:-**

William Anson defines a contract as a legally binding agreement made between two or more persons by which rights are acquired by one or more to acts or forbearance's on the part of the other or others. Hence, a contract is an agreement between two or more persons which is intended to have legal consequences. It is clear from the above definition of the contract that there are two elements of a contract:

An agreement, and

Legal obligation.

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Essential Elements Contract.

Agreement: According to Section 2(e) every promise and set of promises forming the consideration for each other is agreement. This means that in an agreement there can be one or more than one promises given in return for each other. Promise is defined in Section 2 (b) in these words.

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. Therefore every agreement, is composed of a proposal from one side and its acceptance from the other. To sum up: Agreement = Offer or Proposal+ Acceptance of Offer

The agreement must give rise to legal obligation: i.e., it should be enforceable by law: An agreement to become a contract must be coupled with obligation. An obligation is the legal duty to do or abstain from doing something. Here a distinction needs to be made between legal and social obligations. Agreements creating social or moral obligations do not make a contract. Thus an agreement to have lunch together or to go to a movie is not legally binding.

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In such agreements no legal duty is imposed on any party. Such agreements are social agreements which do not give rise to legal consequences. To make a contract, an agreement must be enforceable by law.

This means that the agreement must give rise to legal obligation. It is clear from the above discussion that. All contracts are agreements but all agreements are not contracts. All agreements are not contracts. An agreement may or may not create a legal obligation. If no legal binding is intended, a contract does not arise.

Agreements of moral or social nature do not make contracts because parties never intend to create binding legal obligation. In such cases no one can sue the other party in case of default. On the other hand, all contracts are necessarily composed of agreements because for making a contract there must be an agreement first and then it should be enforceable by law.

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Example

X agrees to sell his car to Y for Rs. 80,000. It is an agreement which is legally enforceable, and in case of any breach of promise, the other party will be at liberty to file a suit to recover, the damages.

X agrees to come to the house of Y for a tea party at Y's request, there is an agreement, but it cannot be termed as a contract but it does not attract any legal enforce ability.

Thus, all contracts are agreements but all agreements are not contracts. Only that agreement which is enforceable by law is a contract, and that which is not enforceable by law cannot be a contract.

**Essential Elements of a Valid Contract:** An agreement becomes legally enforceable when it fulfills the conditions laid down in Section 10 of the Contract Act which states, All agreements are contracts if they are made by the free consent of parties, competent to contract, for a lawful consideration and with a lawful object, and not hereby expressly declared to be void.