

CA Foundation Business Laws (60 Marks)

Marks distribution			
Chapter No	Chapter Name	Marks	Total
1	The Indian Contract Act, 1872		
	Q1. (a) Practical Question	4 Marks	10
	Q3. (c) Practical Question	3+3 or 6 Marks	Marks
	Q2. (a) Direct Question	7 Marks	12
	Q6. (a) Direct Question	5 Marks	Marks
	Total marks from The Indian Contract Act, 1872		22Marks
2	The Sale of Goods Act, 1930		
	Q5. (a) Practical Question	6 Marks	6 marks
	Q1. (c) Direct Question	4 Marks	10
	Q4. (a) Direct Question	6 Marks	Marks
	Total marks from The Sale of Goods Act, 1930		16Marks
3	The Indian Partnership Act, 1932		
	Q4. (b) Practical Question	6 Marks	6 Marks
	Q3. (a) Direct Question	2	10
	Q3. (b) Direct Question	4 Marks	Marks
	Q6. (b) Direct Question	4 Marks	
	Total marks from The Indian Partnership Act, 1932		16Marks
4	The Limited Liability Partnership Act, 2008		
	Q2. (b) Direct Question	5 Marks	5 Marks
	Total marks from The Limited Liability Partnership Act, 2008		5 Marks
5	The Companies Act, 2013		
	Q6. (c) Practical Question	3 Marks	7 Marks
	Q1. (b) Practical Question	4 Marks	
	Q5. (b) Direct Question	6 Marks	6 Marks
	Total marks from The Companies Act, 2013		13Marks

	Grand Total of all 5 Chapters		72
	Total Marks of Practical Questions	29	72
	Total Marks of Direct Questions	43	
	You have to attempt		60
	Optional Questions		12

Important Questions & Topics of The Indian Contract Act, 1872

Unit - I Nature of Contracts

Q.1 Mr. Ramesh promised to pay Rs. 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed. (3 Marks) [Nov 18]

Answer:

Provisions of The Indian Contract Act 1872

- Parties must intend to create legal obligations:** There must be an **intention** on the part of the parties to **create legal relationship** between them.
- Social or domestic type of agreements are not enforceable** in court of law and hence they do not result into contracts.

In the given question

Mr. Ramesh promised to pay Rs. 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh.

Conclusion

Here, in the given circumstance wife will not be able to recover the amount as it was a **social agreement** and the parties did not intend to create any legal relations.

Related Question: "All contracts are agreements, but all agreements are not contracts". Comment. [MTP Nov 21 - 4 Marks]

Answer:

"All Contracts are Agreements but all Agreements are not Contracts"

- Contract = Agreement + Enforceability by law.** Thus, for a Contract, there should first be an Agreement.
- Agreements that do not give rise to legal obligations are not Contracts.** Example: A invites B for his son's wedding. B accepts the invitation. This is a mere agreement, not a Contract, there being no intention to create legal obligation.
- Agreements to do an unlawful, immoral or illegal act, like smuggling or murdering a person, cannot be enforceable by law.** Such agreements cannot be considered as a Contract.

4. Also, certain Agreements are specifically declared Void or Unenforceable. Example: Agreements to bet i e wagering Agreements, Agreements in restraint of trade, agreements to do an impossible act, etc.

5. Hence, all Agreements are not Contracts, but all contracts are in fact Agreements.

Related Question:	Hint Answer
A invites B to stay with him during the winter vacation at his residence. B accept the invitation and informs A accordingly. When B reaches A's house, he finds it locked and he has to stay in a hotel. Can B claim damages from A? (3 Marks)	Mr. A invites to Mr. B to stay with him during winter vacation at his residence as it is a social contract and offer and acceptance to hospitality does not create contract.
Arjun invites Sunny Leone to Satish's [Brother of Arjun] Birthday party. Sunny Leone accepts the invitation and promises to attend. Arjun made special arrangement for Sunny Leone at the party but she did not came. Arjun is upset with Sunny's behaviour, wanted to sue for loss incurred in making special arrangements. Arjun is seeking your advice.	Arjun cannot sue sunny for loss. Agreement was a kind of social nature and therefore, lacked the intention to create legal relationship. CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8
A Father promised to pay his son a sum of ₹ 1 Lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but the father failed to pay the amount as promised. The son files a suit for recovery of the amount. State whether the son can recover the amount under the Indian Contract Act, 1872. [Mock Test Paper Oct 18 ICAI]	The son cannot recover the amount of ₹ 1 Lakh from his father. An agreement of domestic nature cannot be considered as a valid Contract. CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Q.2 A shop-keeper displayed a pair of dress in the show-room and a price tag of Rs. 2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872. (3 Marks) [Nov 18]

Answer:

Provisions of The Indian Contract Act 1872 - Same as above.

Conclusion

In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell.

Related Question:

Hint Answer

Ajit sees a book displayed in a shelf of a book shop with a price tag of ₹ 95. Ajit tenders ₹ 95 at the counter and asks for the book. The Bookseller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. Is the Bookseller bound to sell the book to Ajit?

No, Book Seller is not bound to sell the book to Ajit. Display of goods with prices marked there-on is only an invitation to offer.

Related Question: Rahul goes to super market to buy a washing machine. He selects a branded washing machine having a price tag of Rs.15000 after a discount of Rs. 3000. Rahul reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay Rs.18000." Rahul got angry and insists for Rs. 15000. State with reasons whether under Indian Contract Act, 1872, Rahul can enforce the cashier to sale at discounted price i.e., Rs.15000. (MTP Oct 21- 4 Marks)

Answer:

An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An **invitation to offer is an act precedent to making an offer.** Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Rahul reaches to super market and selects a washing machine with a discounted price tag of ` 15000 but cashier denied to sale at discounted price by saying that discount is closed from today and request to make full payment. But Rahul insists to sale at discounted price.

On the basis of above provisions and facts, the price tag with washing machine was not offer. It is merely an invitation to offer. Hence, it is the Rahul who is making the offer not the super market. Cashier has right to reject the Rahul's offer. Therefore, Rahul cannot enforce cashier to sale at discounted price.

Q.3 Explain the modes of revocation of an offer as per the Indian Contract Act, 1872. (5 Marks)
[Nov 18] [MTP Aug 18, 7 Marks]

Answer:

Modes of revocation of Offer

- (i) **By notice of revocation**
- (ii) **By lapse of time:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.
- (iii) **By non-fulfillment of condition precedent:** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.
- (iv) **By death or insanity:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

Q.4 Define an offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer? [RTP Nov 19]

Answer:

Definition: The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as

1. **When one person signifies to another his willingness to do or to abstain from doing anything**
2. **With a view to obtaining the assent of that other to such act or abstinence**
3. **he is said to make a proposal.**

Essentials: The following are important essentials of an offer: -

- I) **Must be capable of creating legal relation.**
- II) **Must be certain, definite and not vague.**
- III) **Must be communicated.**
- IV) **Must be made with a view to obtaining the assent of the other party**
- V) **May be conditional**
- VI) **Offer should not contain a term the non-compliance of which would amount to acceptance**

- VII) May be general or specific
- VIII) May be expressed or implied
- IX) A statement of price is not an offer

Q.5 Define the term Acceptance. Discuss the legal provisions relating to communication of Acceptance. [Back question of Module] [RTP Nov 20] [Jan 21 - 7 Marks]

Answer:

As per the provisions of the Indian Contract Act, 1872, when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. The proposal, when accepted, becomes a promise. This is known as acceptance.

Legal rules regarding valid acceptance:

- 1. Acceptance can only be given by the person to whom the offer is made or who has the knowledge of the offer:** In the case of a specific offer, it can be accepted only by the person to whom it is made. In the case of a general offer, it can be accepted by any person who has the knowledge of the offer.
- 2. Acceptance must be absolute and unqualified:** The acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.
- 3. The acceptance must be communicated:** To conclude the contract between the parties, the acceptance must be communicated in a reasonable form. Any conditional acceptance is no acceptance. If the proposal is accepted by the offeree, he must have the complete knowledge of the offer made to him.
- 4. Acceptance must be in a prescribed mode:** Where the mode of acceptance is prescribed in a proposal, it must be accepted in that manner. But, if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise (not in the prescribed manner), the proposer is presumed to have consented to the acceptance.
- 5. Time:** Acceptance must be given within a specified time limit, and if no time is fixed, then the acceptance shall be given within a reasonable time and before the offer lapses.

6. Mere silence is not acceptance: The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer unless the offeree has in any previous conduct indicated that his silence is the evidence of the acceptance.

7. Acceptance by conduct/Implied Acceptance: The performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal.

Related Question: A sends an offer to B to sell his second-hand-car for ₹ 40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What is the position if B communicates his acceptance after one week? [RTP Nov 19]

When B remains silent, it does not amount to Acceptance, as acceptance cannot be implied merely from silence of offeree.

Acceptance must be made within the time limit prescribed in the offer. Hence, B's Acceptance after one week (i.e., after the time prescribed by the Offeror has elapsed), will not operate to turn the offer into a Contract.

Q.6 Ramaswamy proposed to sell his house to Ramanathan. Ramanathan sent his Acceptance by Post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance, in the light of the following -

- A. The telegram of revocation of acceptance is received by Ramaswamy before the letter of acceptance (by Post).
- B. The telegram of revocation and letter of acceptance both reached together. [RTP Nov 18]

Answer:

1. The problem is related with the communication and time of acceptance and its revocation.
2. **As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.**
3. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions:

- a. Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
- b. If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not

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Answer:

Provisions of The Indian Contract Act 1872

1. Offer should be distinguished from an invitation to offer:

Basis of Distinction	Offer	Invitation to Offer
1. Meaning	Where a person shows his willingness to enter into a contract, it is called as an offer.	Where a person invites others to make an offer to him, it is called as an invitation to offer.
2. Purpose	An offer is made by a person with the purpose of entering into a contract.	The purpose of making an invitation to offer is to receive the offers or to negotiate the terms on which the person making the invitation is willing to contract.
3. Legal effect	An offer, if acted upon (i.e., accepted), results in a contract.	An invitation to offer, if acted upon, only results in making of an offer.

2. The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract.

Conclusion

In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. If the shopkeeper does not accept the price, the interested buyer cannot compel him to sell.

Related Question: Shambhu Dayal started "self-service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872.

[MTP March 19, 4 Marks] [MTP Nov 21 - 4 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

6. Mere silence is not acceptance: The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer unless the offeree has in any previous conduct indicated that his silence is the evidence of the acceptance.

7. Acceptance by conduct/Implied Acceptance: The performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal.

Related Question: A sends an offer to B to sell his second-hand-car for ₹ 40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What is the position if B communicates his acceptance after one week? [RTP Nov 19]

When B remains silent, it does not amount to Acceptance, as acceptance cannot be implied merely from silence of offeree.

Acceptance must be made within the time limit prescribed in the offer. Hence, B's Acceptance after one week (i.e., after the time prescribed by the Offeror has elapsed), will not operate to turn the offer into a Contract.

Q.6 Ramaswamy proposed to sell his house to Ramanathan. Ramanathan sent his Acceptance by Post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance, in the light of the following -

A. The telegram of revocation of acceptance is received by Ramaswamy before the letter of acceptance (by Post).

B. The telegram of revocation and letter of acceptance both reached together. [RTP Nov 18]

Answer:

1. The problem is related with the communication and time of acceptance and its revocation.
2. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.
3. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions:

- a. Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
- b. If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not

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possible as the contract has already been concluded.

Related Question: Mr. B makes a proposal to Mr. S by post to sell his house for Rs. 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020

Examine with reference to the Indian Contract Act, 1872:

(i) On which date, the offer made by Mr. B will complete?

(ii) Discuss the validity of acceptance.

(iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together? [Jan 21 - 6 Marks]

Answer:

1. The problem is related with the communication of offer and time of acceptance and its revocation.
2. According to Section 4 of The Indian Contract Act, 1872
 - **Communication of a proposal when complete** - The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
 - **Communication of an acceptance when complete** - The communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.
3. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions:

1. In the Instant case, the communication of offer will complete on 13th April 2020 because S read the offer on 13th April i.e the date on which offer comes to his knowledge.
2. In the Instant case, acceptance is not valid, instead revocation of acceptance is valid because S (Acceptor) revoked his acceptance by sending a telegram withdrawing his acceptance which reaches B on 17th April before 20th April i.e., before the communication of acceptance comes to the knowledge of B (Offeror).
3. When both the letter of acceptance and revocation is reached at the same time, the validity of acceptance is determined by which is opened first, i.e., telegram or post. The revocation is sent by telegram but the acceptance is sent by post.

A rational person would normally open the telegram first, and hence the acceptance stands

revoked. So, if the proposer (B) opens the telegram first and reads it, the revocation of acceptance is valid, and there is no contract.

However, if B opens the letter first and reads it, then the acceptance is complete and cannot be revoked. There is a valid contract in such a case.

Note: An alternative view is given as under -

Two communications (letter and telegram) reaching simultaneously will neutralize each other, and there is no agreement due to lack of consensus-ad-idem. [Countess of Dunmore vs Alexander]

Q.7 Decide with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:

- (i) Vijay agrees with Saini to sell his black horse for ` 3,00,000. Unknown to both the Parties, the horse was dead at the time of the agreement.
- (ii) Sarvesh sells the goodwill of his shop to Vikas for ` 10,00,000 and promises not to carry on such business forever and anywhere in India.
- (iii) Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. [RTP May 18]

Answer (i)

1. As per Section 20 of the Indian Contract Act, 1872 an agreement under by mistake of fact are void.
2. In this case, there is mistake of fact as to the existence of the subject- matter, i.e., with respect to the selling of horse which was dead at the time of the agreement. It is unknown to both the parties.
3. Therefore, it is a void agreement.

Answer (ii)

1. As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void.
2. However, a buyer can put such a condition on the seller of goodwill, not to carry on same business, provided that the conditions must be reasonable regarding the duration and place of the business.
3. Since in the given case, restraint to carry on business was forever and anywhere in India, so the agreement in question is void.

Answer (iii)

1. As per section 2(j) of the Contract Act, 1872 "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable".
2. In the present case, Mr. X agrees to write a book with a publisher.
3. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

Q.8 Point out with reason whether the following agreements are valid or void:

- (a) Kamala promises Ramesh to lend Rs 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
- (b) Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
- (c) Ram sells the goodwill of his shop to Shyam for Rs 4,00,000 and promises not to carry on such business forever and anywhere in India.
- (d) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.
- (e) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend. [RTP Nov 18] [MTP Oct 19]

Answer:

- (a) **Void Agreement:** As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.
- (b) **Void Agreement:** As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.
- (c) **Void Agreement:** As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
- (d) **Void Agreement:** An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

(e) **Valid Agreement:** An agreement with alien friend is valid, but an agreement with alien enemy is void.

Q.9 Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

- (i) A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.
- (ii) Obligation of finder of lost goods to return them to the true owner
- (iii) A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is effected, the fire caught in the factory and everything was destroyed. [RTP May 20]

Answer: (i)

1. It is an implied contract and A must pay for the services of the coolie.

2. **Implied Contracts:** This implies a contract though parties never intended. Where a Proposal or Acceptance is made otherwise than in words, promise is said to be implied.

Answer: (ii)

Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is a contract in which there is no intention on part of either party to make a contract but law imposes a contract (rights and obligations) upon the parties.

Answer: (iii)

The above contract is a void contract.

Void Contract: Section 2 (j) of the Act states as follows: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus, a void contract is one which cannot be enforced by a court of law.

Unit- 2: Consideration

Very Important Unit

Q.1 Define consideration. What are the legal rules regarding consideration under the Indian Contract Act, 1872? (7 Marks) [Nov 19] [RTP Nov, 2018] [MTP March 19, 5 Marks]

Answer:

Consideration [Section 2(d) of the Indian Contract Act, 1872]: When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise.

Legal Rules Regarding Consideration

- (i) Consideration must move at the desire of the promisor:** Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration.
- (ii) Consideration may move from promisee or any other person:** In India, consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract.
- (iii) Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.
- (iv) Consideration may be past, present or future:** It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But in the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.
- (v) Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.
- (vi) Performance of what one is legally bound to perform:** The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence such a contract is void for want of consideration. But where a person promises to do more that he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration. It should not be vague or uncertain.

(vii) **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.

(viii) **Consideration must not be unlawful, immoral, or opposed to public policy.** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

Q.2 "Only a person who is party to a contract can sue on it". Explain this statement and describe its exceptions, if any. [RTP May 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Or

Stranger to a contract cannot sue, However in some cases even a stranger to a contract may enforce a claim. Explain [RTP May 18] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer: Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it.

Thus, the concept of stranger to consideration is valid and is different from stranger to a contract.

The aforesaid rule, that stranger to a contract cannot sue is known as a "doctrine of privity of contract", is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

1. **In the case of trust**, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
2. **In the case of a family settlement**, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
3. **In the case of certain marriage contracts**, a female member can enforce a provision for marriage expenses made on the partition of the Hindu Undivided Family.
4. **In the case of assignment of a contract**, when the benefit under a contract has been assigned, the assignee can enforce the contract.
5. **Acknowledgement or estoppel** - where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.
6. **In the case of covenant running with the land**, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

7. **Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

Related Question: Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for ` 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice.

On 12th October, 2018, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2018 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.

Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressed. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal's plan of action? (4 Marks) [May 2019]

Answer:

1. Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in **section 2(d) and on the principle 'privity of consideration'**.
2. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person.
3. As the clear language used in definition of 'consideration' in Section 2(d), **it is not necessary that consideration should be furnished by the promisee only.**
4. A promise is enforceable if there is some consideration for it and **it is quite immaterial whether it moves from the promisee or any other person.**
5. In case of the *Chinnaya Vs. Ramayya*, held that the consideration may move from a third party and it is an accepted principle of law in India.

In the given problem

1. Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration came from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land.
2. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the

use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it:

3. Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller."

Conclusion

1. In such a case, third party to a contract can file the suit although it has not moved the consideration.
2. Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.

Q.3 Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of 20,000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant.

On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action.

Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid? [RTP Nov 2018] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

1. In India, consideration may proceed from the promisee or any other person who is not a party to the contract.
2. The definition of consideration as given in section 2(d) makes the above statement clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. **In other words, there can be a stranger to a consideration but not stranger to a contract.**

In the given problem

1. Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration came from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant.
2. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Conclusion

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.

Q.4 State the exceptions to the rule "An agreement without consideration is void".

OR

No Consideration No Contract, Comment.

[May 2018, 5 Marks] [Jan 21- 5 Marks] [MTP April 19, 5 Marks] [MTP Oct 18, 5 Marks] [MTP March 18, 5 Marks] [RTP May 19] [RTP Nov 19] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

No consideration, no contract

1. Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void.
2. No consideration, no contract is a general rule.
3. However, Section 25 of the Indian Contract Act, 1872 provides some exceptions to this rule, where an agreement without consideration will be valid and enforceable.
4. These exceptions are as follows:
 - (i) **Agreement made on account of natural love and affection Section 25 (1):** If an agreement is
 - a) in writing
 - b) registered under the law and
 - c) made on account of natural love and affection
 - d) between the parties standing in a near relation to each otherit will be enforceable at law even if there is no consideration.
Thus, where A, for natural love and affection, promises to give his son, B, ₹ 1, 00,000 in writing and registers it. This is a valid contract.
 - (ii) **Compensation for past voluntary services Section 25(2):**
 - a) A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable.
 - b) Thus, when A finds B's purse and gives it to him and B promises to give A ₹ 5,000, this is a valid contract.
 - (iii) **Promise to pay time-barred debts Section 25 (3):**
 - a) Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and enforceable even though there is no consideration.

b) If A owes B ` 1,00,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay ` 50,000 on account of this debt, it constitutes a valid contract.

(iv) **Contract of agency (Section 185):** No consideration is necessary to create an agency.

(v) **Completed gift (Explanation 1 to Section 25):** A completed gift needs no consideration. Thus, if a person transfers some property by a duly written and registered deed as a gift, he cannot claim back the property subsequently on the ground of lack of consideration.

(vi) **Bailment (Section 148):** No consideration is required to effect the contract of bailment.

(vii) **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

Related Question: Mr. Y given loan to Mr. G of INR 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt Contract is enforceable in law? [Dec 20, 2 Marks]

Answer:

Promise to pay time-barred debts Section 25 (3):

- Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and enforceable even though there is no consideration.
- If A owes B ` 1,00,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay ` 50,000 on account of this debt, it constitutes a valid contract.

In the instant case

G agreed to settle the full amount to Mr. Y of time barred debt. If such promise is in writing & signed by G or by his authorised agent then acceptance of such time barred debt is enforceable otherwise not enforceable.

Q.5 "To form a valid contract, consideration must be adequate". Comment. [Back Question of Module] [MTP Oct 19, 5 Marks] [MTP Aug 18, 5 Marks] [RTP NOV 20] [RTP May 21] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

- The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value.
- The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (*Bolton v. Modden*).
- Consideration must however, be something to which the law attaches value though it need not

be equivalent in value to the promise made.

4. According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor 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.

Q.6 Mr. Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872? [RTP Nov 21]

Answer:

Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if

- it is **expressed in writing and registered** under the law for the time being in force for the registration of documents and
- is **made on account of natural love and affection between parties** standing in a **near relation** to each other.

In the instant case, the transfer of house made by Mr. Ram Lal Birla on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

Unit - 3: Other Essential Elements of a Contract

Q.1 Explain the term 'Coercion' and what are the effects of coercion under Indian Contract Act, 1872. [Nov 19, 5 Marks] [MTP Oct 18, 5 Marks] [RTP May 18] [MTP Oct 21, 5 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer: Coercion is -

Act	Intention
(a) the committing, or threatening to commit any act forbidden by the Indian Penal Code, or	With the intention of causing any person to enter into an agreement.
(b) the unlawful detaining or threatening to detain, any property, to the prejudice [harm or injury] of any person,	

Effects of coercion under section 19 of Indian Contract Act, 1872

- (i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
- (ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
- (iii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Q.2 Discuss the essentials of Undue Influence as per the Indian Contract Act, 1872. [May 2019, 5 Marks]

Answer: The essentials of Undue Influence as per the Indian Contract Act, 1872 are the following:

- (1) **Relation between the parties:** A person can be influenced by the other when a near relation between the two exists.
- (2) **Position to dominate the will:** Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other.
- (3) A person is deemed to be in such position in the following circumstances:
 - (a) **Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient etc.
 - (b) **Fiduciary relationship:** Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, etc.

(c) **Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.

(d) **Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money lending transactions and in gifts.

(4) **The object must be to take undue advantage:** Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

Burden of proof: The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

Related Question: Explain the circumstances in which the person is deemed to be in a position to dominate the will of the other person under the Indian Contract Act, 1872. [RTP May 20] - Answer same as point 3 Above.

Related Question: A student was induced by his teacher to sell his brand-new car to the latter at less than the purchase price to secure more marks in the examination. Accordingly, the car was sold. However, the father of the student persuaded him to sue his teacher. State on what ground the student can sue the teacher? [RTP May 18] [RTP Nov 19]

Answer: Yes, the student can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

Q.3 Define Fraud. Whether "mere silence will amount to fraud" as per the Indian Contract Act, 1872? [May, 2018, 5 Marks] [MTP April 19, 5 Marks] [MTP March 18, 5 Marks] [RTP Nov 18]

Fraud means and includes -

Commission of the following acts -	Committed by -	Intention
(a) Suggestion as a Fact , of something which is not true, by a person who does not believe it to be true, (b) Active concealment of a Fact by one having knowledge or belief of the fact,	(a) A party to the Contract, or (b) By any person with the connivance of the party to the Contract, or	To deceive another party to the contract, or his Agent, OR

<p>(c) Promise made without any intention of performing it,</p> <p>(d) Any other act fitted to deceive,</p> <p>(e) Any such act or omission as specifically declared by law to be fraudulent.</p>	<p>(c) An agent of the party to the Contract.</p>	<p>To induce another party to enter into the contract.</p>
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DOES SILENCE AMOUNT TO FRAUD?

Silence Not Fraud [Explanation to Section 17]	Exceptions i.e., Silence = Fraud
<p>Mere silence as to facts, likely to affect the willingness of a person to enter into a Contract is not Fraud. Caveat Emptor'</p> <p>I.e., let the purchaser beware is the rule applicable to contracts.</p> <p>Example: A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud by A.</p>	<p>a) Having regard to the circumstances, if it is the duty of the person (keeping silence) to speak,</p> <p>b) Silence by itself is equivalent to Speech.</p>

Related Question: P sells by auction to Q a horse which P knows to be unsound. The horse appears to be sound but P knows about the unsoundness of the horse. Is this contract valid in the following circumstances:

- (a) If P says nothing about the unsoundness of the horse to Q.
- (b) If P says nothing about it to Q who is P's daughter who has just come of age.
- (c) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing. [RTP May 19]

Answer: Provision Same as above table **DOES SILENCE AMOUNT TO FRAUD?**

- (a) This contract is valid since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
- (b) This contract is not valid since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence is equivalent to speech and hence amounts to fraud.
- (c) This contract is not valid since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.

Related Question: Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of ` 40,000. He was very happy to get ` 40,000 and quickly went to the market and purchased a laptop worth ` 30,000. He happily spent the rest of the amount with his friends on a pleasure trip.

Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872? [RTP Nov 21]

Answer:

1. As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning.
2. When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement.
3. However, if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same.
4. Hence, in the present case, Rahul is not liable to repay Rs.40,000 that he has borrowed from the shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.

Q.4 (i) Distinguish between wagering agreement and contract of insurance. [May 2018, 2 Marks] [Dec 20 - 5 Marks]

OR

(ii) Examine with reason that the given statement is correct or incorrect "Minor is liable to pay for the necessaries supplied to him". [May 2018, 2 Marks]

Answer:

	Basis	Wagering Agreement	Contracts of Insurance
1.	Meaning	It is a promise to pay money or money's worth on the happening or non-happening of an uncertain event.	It is a contract to indemnify the loss.

2.	Consideration	There is no consideration between the two parties. There is just gambling for money.	The crux of insurance contract is the mutual consideration (premium and compensation amount).
3.	Insurable Interest	There is no property in case of wagering agreement. There is betting on other's life and properties.	Insured party has insurable interest in the life or property sought to be insured.
4.	Contract of Indemnity	Losers has to pay the fixed amount on the happening of uncertain event.	Except life insurance, the contract of insurance indemnifies the insured person against loss
5.	Enforceability	It is void and unenforceable agreement.	It is valid and enforceable
6.	Premium	No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
7.	Public Welfare	They have been regarded as against the public welfare.	They are beneficial to the society.

Or

Answer:

1. **Minor is liable to pay for the necessities supplied to him:** This statement is incorrect.
2. The case of necessities supplied to a minor or to any other person whom such minor is legally bound to support is governed by **section 68** of the Indian Contract Act, 1872.
3. **A claim for necessities supplied to a minor is enforceable by law, only against minor's estate, if he possesses.**
4. **But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.**

Q.5 Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2016 he took a loan of Rs. 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th

May, 2017. Ishaan possesses assets worth Rs.15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872. [MTP March 18, 4 Marks] [RTP May 2020] [MTP Oct 20- 6 Marks]

Answer:

Provisions of The Indian Contract Act, 1872

1. According to **Section 11** of the Indian Contract Act, 1872, **every person is competent to contract** who is of the age of **majority** according to the law to which he is subject, and who is of **sound mind** and is **not disqualified** from contracting by any law to which he is subject.
2. A person who has **completed** the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].
3. Same as point 2, 3 & 4 Above.

Conclusion

Thus, according to the above provision, Vishal will be entitled to recover the amount of loan given to Ishaan for payment of the college fees from the property of the minor.

Related Question: Examine the validity of the following contracts as per the Indian Contract Act, 1872, giving reasons.

X, aged 16 years, borrowed a loan of 50,000 for his personal purposes. A few months later, he had become major and could not pay back the amount borrowed on the due date. The lender wants to file a suit against X. [Dec 21 3 Marks]

Answer:

Provisions of The Indian Contract Act, 1872

1. According to **Section 11** of the Indian Contract Act, 1872, **every person is competent to contract** who is of the age of **majority** according to the law to which he is subject, and who is of **sound mind** and is **not disqualified** from contracting by any law to which he is subject.
2. A person who has **completed** the age of 18 years is a major and otherwise he will be treated as minor. Thus, X who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].
3. A claim for necessities supplied to a minor is enforceable by law, only against minor's estate,

if he possesses.

4. But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.

Conclusion

Thus, according to the above provision, lender will not be entitled to recover the amount of loan given to X.

Q.6 "Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss. [RTP May 18] [Back Question of Module]

Answer:

- 1. Minor can be a beneficiary or can take benefit out of a contract:** Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.
- 2. For example:** A promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.
- 3. A mortgage was executed in favour of minor.** Held, he can get a decree for the enforcement of the mortgage.
- 4. A minor cannot become partner in a partnership firm.** However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

Q.7 (a) Explain the concept of 'misrepresentation' in matters of contract.

(b) Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons. [RTP May 19] [RTP May 20]

Answer: Misrepresentation means and INCLUDES -

<p>Positive Assertion</p>	<ul style="list-style-type: none"> • of such fact, which is not true, though he believes it to be true, • made in a manner not warranted by the information of the person making it.
<p>Any Breach of Duty</p>	<ul style="list-style-type: none"> • made without an intent to deceive, • but bringing gains and advantage to the person committing it, or to any one claiming under him, • by misleading another to his prejudice, or to the prejudice of anyone claiming under him.
<p>Causing the other party to make mistake</p>	<ul style="list-style-type: none"> • as to the substance of the subject matter of the agreement.

In the instant case

1. The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872].
2. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

Conclusion

Accordingly, in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale.

Related Question: Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sale his motor car for Rs. 3, 00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying Rs. 3, 00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground. [MTP Aug 18, 6 Marks] [RTP NOV 20] [RTP May 21]

Answer:

Provisions of The Indian Contract Act, 1872

1. As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.
2. A party to contract, whose consent was caused by fraud or misrepresentation, may, if he think fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.
3. **Exception-** 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.**

Conclusion

In the situation given in the question, **BOTH THE FUEL METER AND THE SPEED METER OF THE CAR WERE WORKING PERFECTLY**, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract on the above ground.

Related Question: Define Misrepresentation and Fraud. Explain the difference between Fraud and Misrepresentation as per the Indian Contract Act, 1872. [Dec 20 - 7 Marks]

Answer:

Definition: Same as given in Q3 & Q7(a)

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Recession of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect	Party can always plead that the injured party had the means to discover the

himself by saying that the injured party had means to discover the truth.	truth.
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Q.8 'X' agreed to become an assistant for 2 years to 'Y' who was practicing Chartered Accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a Chartered Accountant on his own account within 20 kms of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms. [RTP May 18]

Answer:

Agreement in Restraint of Trade

1. Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade.
2. According to the said section, every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.
3. **Exception: In the case of the service agreements restraint of trade is valid.** In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.

In the instant case

Agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

Conclusion

Therefore, 'X' can be restrained by an injunction from practicing on his own account in within the said area of 20 Kms for another one year.

Related Question: Rohan is running a grocery store in Delhi. He sells his grocery business, including goodwill worth Rs. 1,00,000 to Rohit for a sum of Rs. 5,00,000. After the sale of goodwill, Rohit made an agreement with Rohan. As per this agreement, Rohan is not to open another grocery store (similar kind of business) in the whole of India for next ten years. However, Rohan opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Rohan with reference to Indian Contract Act, 1872?
[MTP Oct 21 - 6 Marks]

Answer:

Section 27 of the Indian Contract Act, 1872 provides that any agreement that restrains a person from carrying on a lawful trade, profession or business is void agreement. However, there are certain exceptions to this rule. One of the statutory exceptions includes sale of Goodwill. The restraint as to sale of goodwill would be a valid restraint provided -

- (i) Where the restraint is to refrain from carrying on a similar business.
- (ii) The restraint should be within the specified local limits.
- (iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price.
- (iv) The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court.

In the given case, Rohan has sold the goodwill and there is restraint for not carrying on the same business of grocery store. However, the restriction imposed on Rohan is unreasonable as he cannot carry similar business in whole of India for next 10 years. The restriction on restraint to similar kind of trade should be reasonable to make it a valid agreement. Therefore, Rohit cannot take any legal action against Rohan as the restriction is unreasonable as per Section 27 of Indian Contract Act, 1872. Hence, the agreement made between Rohan and Rohit in restraint of trade is void agreement.

Related Question: X a businessman has been fighting a long-drawn litigation with Mr. Y an industrialist. To support his legal campaign, he enlists the services of Mr. C a Judicial officer stating that the amount of Rs. 10 lakhs would be paid to him if he does not take up brief of Mr. Y.

Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C. Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872? [Dec 20 4 Marks]

Answer:

The problem as asked in the question is based on Section 10 of the Indian Contract Act, 1872.

This Section says that all agreements are contracts if they are made by the

- ✓ free consent of the parties competent to contract,
- ✓ for a lawful consideration and
- ✓ with a lawful object and are not expressly declared to be void.

Further, Section 23 also states that every agreement of which the object is unlawful is void.

Accordingly,

- one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void.
- An illegal agreement is an agreement expressly or impliedly prohibited by law.
- A void agreement is one without any legal effects.

The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872.

Conclusion

Hence, Mr. C in the given case cannot recover the amount of RS. 10 lakhs promised by Mr. X because it is a void agreement and cannot be enforced by law.

Q.9 What is a wagering agreement? Describe the transactions which resembles with wagering transactions but are not void. [RTP May 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

Wagering agreement (Section 30 of the Indian Contract Act, 1872)

1. An agreement by way of a wager is **void**. It is an agreement involving payment of a sum of money upon the determination of an uncertain event.
2. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.
3. **For example**, A agrees to pay ` 50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager. But if one of the parties has control over the event, agreement is not a wager.

Transactions resembling with wagering transaction but are not void

- (i) **Chit fund**: Chit fund does not come within the scope of wager (Section 30). In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.

- (ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- (iii) **Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed Rs. 1,000.
- (iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

Q10. Mr. S aged 58 years was employed in a Govt. Department. He was going to retire after two years. Mr. D made a proposal to Mr. S to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum Rs. 10 Lakhs as consideration to Mr. S in order to induce him to retire.

Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office.

Whether the above agreement is valid? Explain with reference to provision of Indian Contract Act, 1872. [Jan 21 - 4 Marks] [RTP May 21]

Answer:

Trafficking relating to Public Offices and titles (Section 23 of The Indian Contract Act, 1872)

An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested.

In the instant case

Mr. S (Public Servant) agreed to receive the consideration to apply for voluntary retirement from his post so that Mr. D can be appointed in his place is opposed to public policy and hence void.

Conclusion

An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

Q11. State with the reason(s) whether the following agreements are valid or void: [July 21- 1 Mark each]

- I.** A clause in a contract provided that no action should be brought upon in case of a breach.
- II.** Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.
- III.** X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.
- IV.** X, a physician and surgeon, employs Y as an assistant on a salary of ₹ 75,000 per month for a term of two years, and Y agrees not to practice as a surgeon and physician during these two years.

Answer:

I. Agreement in restraint of legal proceedings (Section 28):

An agreement in restraint of legal proceeding is the one:

1. by which any party thereto is **restricted absolutely** from enforcing his rights under a contract through a Court

or

2. which **abridges the usual period** for starting legal proceedings.

A contract of this nature is **void**.

In the instant case

A clause in a contract provided that no action should be brought upon in case of a breach is void because such clause is restricting the parties to enforce their right in case of breach.

II. Agreement in restraint of legal proceedings (Section 28):

An agreement in restraint of legal proceeding is the one by which any party thereto is **RESTRICTED ABSOLUTELY** from enforcing his rights under a contract through a Court.

In the instant case

An agreement between the parties that the suit should be filed in one of those courts alone and not in the other is **partial restriction and not an absolute one**. Hence, the agreement between the parties is valid.

III. Contract caused by mistake of one party as to matter of fact (Section 22):

- Unilateral mistake is when only one party to the contract is under a mistake.
- If one of the parties is under a mistake the contract remains valid.

IV. Exception to section 27 i.e., Agreement in Restraint of Trade

1. **In the case of the service agreements restraint of trade is valid:** In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.
2. Therefore, in the instant case the agreement between x and y is valid.

Unit - 4: Performance of Contract

Q.1 Mr. Sonumal a wealthy individual provided a loan of Rs 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of Rs 1, 50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided Rs. 1, 00,000 on 28.02.2019 and remaining ` 50,000 on 03.03.2019.

On 10.03.2019 Mr. Datumal while paying off part Rs. 75,000 to Mr. Sonumal insisted that the lender should adjusted Rs 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019.

Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.

Now you decide:

- (i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?
- (ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
- (iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part? **[November 19, 6 Marks]**

Answer:

Appropriation of payments made by the Debtor to the Creditor

1. Meaning: Appropriation of Payment = Application of Payment.

2. Rules as to Appropriation of Payments:

Situation: A Debtor owes several distinct debts to one Creditor and makes a payment to that Creditor

Situation 1	Situation 2	Situation 3
Appropriation by Debtor [Sec.59] Debt to be discharged is indicated	Appropriation by Creditor [Sec.60] Debt to be discharged is NOT indicated	Neither party Appropriates [Sec. 61]

<p>(a) The payment is made with -</p> <ul style="list-style-type: none"> • Express intimation, or under circumstances implying that, • Payment is to be applied to discharge off some particular debt. <p>(b) Payment, if accepted by the Creditor, should be applied to the debt, which is intimated to be discharged.</p>	<p>(a) Debtor has -</p> <ul style="list-style-type: none"> • Omitted to intimate, and • There are no other circumstances indicating to which debt the payment is to be applied. <p>(b) Payment accepted by Creditor may be applied at his discretion to any lawful debt actually due and payable to him, irrespective of whether the recovery is barred by limitation.</p> <p>(c) But, it cannot be applied to a disputed debt.</p>	<p>(a) When neither party makes any appropriation, the payment shall be applied in the order of time, whether or not they are barred by limitation.</p> <p>(b) When debts are of equal standing, payment shall be applied in discharge of each proportionally.</p> <p>(c) Where moneys are received by Creditor without any definite appropriation, money received must first be applied in payment of interest & then towards Principal.</p> <p>Conclusion: Hence in case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.</p>
<p><u>Example:</u></p> <p>1. A owes B totally ₹ 25,000. He sends a cheque for ₹ 10,000 stating that it shall be appropriated towards the first sum of ₹ 10,000 he took from B. B shall</p>	<p><u>Example:</u></p> <p>A obtains two loans of ₹ 20,000 & ₹ 10,000 from a Bank. Loan of ₹ 20,000 is guaranteed by B. A sends the Bank ₹ 5,000 but does not intimate the Bank</p>	<p><u>Example:</u></p> <p>A Trustee deposits ₹ 10,000 trust money with a bank. Later he deposits ₹ 50,000 his own money in the same account. Then, he withdraws ₹ 10,000 and misappropriates it.</p>

<p>appropriate it towards that amount only.</p> <p>2. A owes B among other debts, a sum of ₹ 2,360. B writes to A demanding payment of this sum. A sends ₹ 2,360. Payment should be applied to discharge debt which B demanded.</p>	<p>appropriates whole of ₹ 5,000 to loan of ₹ 10,000 (which is not guaranteed). Appropriation is valid and cannot be questioned either by A or B.</p>	<p>Withdrawal will not be appropriated against Trust amount, but against his own funds, leaving Trust Funds intact.</p>
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Q.2 Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for Rs. 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr. K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of the Indian Contract Act, 1872?

- (i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?
- (ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father? [May 19, 6 marks]

Related Question: Enumerate the persons by whom a contract may be performed under the provisions of the Indian Contract Act, 1872. [MTP Oct 18, 7 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract (Section 37 of the Indian Contract Act, 1872). But their liability under a contract is limited to the value of the property they inherit from the deceased.

- (i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.

- (ii) According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Hence, in the instant case, the agreement between Mr. Rich and Mr. C has become void because of paralysis to Mr. C. So, Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.

Related Question's Answer: As per section 40 of the Indian Contract Act, 1872, the promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

- (i) **Promisor himself:** If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.
- (ii) **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.
- (iii) **Legal Representatives:**
- A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor.
 - As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased.
- (iv) **Third persons:** As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.
- (v) **Joint promisors:** When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly.

Q.3 Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which. Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of Rs. 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of Rs. 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of Rs. 50,000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. [Nov 18, 4 Marks]
[MTP March 19, 6 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

- 1. Subsequent or Supervening impossibility (Becomes impossible after entering into contract):**
When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.
- 2. Also, according to section 65 of the Indian Contract Act, 1872,** when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

In the given question

After Mr. X and Mr. Y have entered into the contract to supply 50 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. X has to pay back the amount of 50,000 that he received from Mr. Y as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Y is correct.

Related Question: Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5, 00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three-month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also

demanded back the security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH.

Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period. [MTP Aug 18, 4 Marks]

Answer: In terms of the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage **under such agreement or contract** is bound to restore it, or to make compensation for it to the person from whom he received it.

Referring to the above provision, we can analyse the situation as under.

The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the **security is not a benefit received under the contract**, it is a security that the purchaser would fulfill his **contract** and is ancillary to the contract for the sale of the Motor Car.

Regarding the second situation given in the question, the agreement becomes void due to the destruction of the Motor car, which is the subject matter of the agreement here. Therefore, the security amount received by Mr. SUCH is required to be refunded back to Mr. JHUTH.

Related Question: Examine the validity of the following contracts as per the Indian Contract Act, 1872, giving reasons.

J contracts to take in cargo for K at a foreign port. J's government afterwards declared war against the country in which the port is situated, and therefore the contract could not be fulfilled. K wants to file a suit against J. [Dec 21 - 3 Marks]

Answer:

Contract becomes Void [Sec. 56]: When the Contract was capable of performance at the time of making it, but subsequently due to some event beyond the control of the Promisor, performance becomes impossible or unlawful, the Contract becomes Void i.e. subsequently rendered void. The parties are discharged from their obligations. In England, it is called 'Doctrine of Frustration'.

In the instant case the contract between J and K was capable of performance until the declaration of war. However subsequently due to declaration of war performance of such contract becomes impossible or unlawful and the contract becomes void. Therefore, k will not be successful in filing a suit against J.

Q.4 X, Y and Z are partners in a firm. They jointly promised to pay Rs. 3, 00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. [May 18, 4 Marks] [MTP April 19, 4 Marks] [RTP Nov 18] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

As per Section 43 of the Indian Contract Act, 1872

1. When two or more persons make a joint promise, the promisee may, unless otherwise agreed, compel any one or more of such joint promisors to perform the whole of the promise.
2. Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless otherwise agreed.
3. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

In the instant case

X, Y and Z jointly promised to pay Rs. 3, 00,000. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount. X is entitled to receive Rs. 20,000 from Y's estate, and Rs. 1,40,000 from Z.

Related Question: A, B, C and D are the four partners in a firm. They jointly promised to pay 6,00,000 to F. B and C have become insolvent B was unable to pay any amount, and C could pay only 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act 1872. [Dec 21, 4 Marks]

Answer:

Provision as per section 43 same as given above

In the instant case

A, B, C and D jointly promised to pay Rs. 6, 00,000. B and C have become insolvent, B was unable to pay any amount, and C could pay only 50,000. A is compelled to pay the whole amount. A is entitled to receive Rs. 50,000 from C, and Rs. 2,75,000 [150000 of his own + (150000 of B + 100000 of C /2)] from D.

Related Question: X, Y and Z jointly borrowed ` 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

- (i) Y can recover the contribution from X and Z,
- (ii) Legal representatives of X are liable in case of death of X,
- (iii) Y can recover the contribution from the assets, in case Z becomes insolvent. [RTP Nov 19] [MTP Oct 19- 4 Marks]

Answer:

As per Section 42 of the Indian Contract Act, 1872

1. When two or more persons have made a joint promise, then, unless otherwise agreed, all such persons jointly must fulfill the promise.
2. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.

As per Section 43 of the Indian Contract Act, 1872

1. When two or more persons make a joint promise, the promisee may, unless otherwise agreed, compel any one or more of such joint promisors to perform the whole of the promise.
2. The liability of the joint promisors has thus been made not only joint but "joint and several".

Section 43 deals with the contribution among joint promisors

1. The promisors, may compel every joint promisor to contribute equally to the performance of the promise unless otherwise agreed.
2. If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

Conclusion

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
- (ii) Legal representative of X is liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- (iii) Y also can recover the contribution from Z's assets.

Related Question: X, Y and Z jointly borrowed ₹ 90,000 from L. Decide each of the following in the light of The Indian Contract Act, 1872:

- i. Whether L can compel only Y to pay the entire loan of ₹ 90,000.
- ii. Whether L can compel only the legal representatives of Y to pay the loan of ₹ 90,000, if X, Y and Z died?
- iii. Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment? [July 21 - 4 Marks]

Answer:

Same provision as given above under section 42 & 43.

Release of Joint Promisor [Sec. 44]:

(a) In case of a Joint Promise, release of one of Joint Promisors by the Promisee does not discharge the other Joint Promisor(s).

(b) Such discharge does not free such Promisor from responsibility to the other Joint Promisor(s).

In the light of the above provision and facts of the case the following are the answers to the questions

- i. L can compel only Y to pay the entire loan of ₹ 90,000. (Section 43)
- ii. L may compel legal representatives of all the joint promisors i.e., X, Y & Z but L cannot compel the legal representative of Y alone. However, a legal representative is liable only to the extent of property of the deceased received by him. (Section 42)
- iii. If L releases X from his liability and sues Y and Z for payment, it does not discharge Y and Z from their liability and such release by L does not free X from his responsibility to Y and Z. (Section 44)

Q.5 X received certain goods from Y and promised to pay ₹ 60,000. Later on, X expressed his inability to make payment. Z, who is known to X, pays Rs. 40,000 to Y on behalf of X. However, X was not aware of the payment. Now Y is intending to sue X for the amount of ₹ 60,000. Can Y do so? Advise. [RTP May 19] [RTP May 18]

Related Question: Discuss the effect of accepting performance from third person. [Module]

Answers: Answer for Both Practical and Direct Question is same

As per section 41 of the Indian Contract Act, 1872

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

Therefore, in the instant case, Y can sue X only for the balance amount i.e., ` 20,000 and not for the whole amount.

Q.6 "The basic rule is that the promisor must perform exactly what he has promised to perform." Explain stating the obligation of parties to contracts. [Module] [RTP May 20]

Answers:

Obligations of parties to contracts (Section 37 of the Indian Contract Act, 1872)

- 1. The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.**
- 2. Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.**

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

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

Analysis of Section 37

- 1. A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.**
- 2. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise.**
- 3. He is absolved from such a responsibility only when under a provision of law or an act of the**

other party to the contract, the performance can be dispensed with or excused.

4. Thus, from above it can be drawn that performance may be actual or offer to perform.

Q.7 "When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract". Explain. [Module]

Answer:

Effect of a Refusal of Party to Perform Promise

According to Section 39, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence (acceptance of something without protest) in its continuance.

Example: A, singer, enters into a contract with B, the Manager of a theatre, to sing at his theatre two nights in every week during next two months, and B engages to pay her `10000 for each night's performance. On the sixth night, A willfully absents herself from the theatre. B is at liberty to put an end to the contract.

Analysis of Section 39

From language of Section 39 it is clear that in the case under consideration, the following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) to indicate by words or by conduct that he is interested in its continuance.

In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

Q.8 Grounds to Discharge Contract. [MTP April 19, 7 Marks] [MTP March 18, 7 Marks]

Answer:

A Contract may be discharged either by an act of parties or by an operation of law which may be enumerated as follows:

(1) **Discharge by performance** which may be actual performance or attempted performance. Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

- (2) **Discharge by mutual agreement:** Section 62 of the Indian Contract Act, 1872 provides that if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.
- (3) **Discharge by impossibility of performance:** The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to (a) unforeseen change in law (b) The destruction of subject matter (c) The non-existence or non- occurrence of particular state of things (d) the declaration of war (Section 56).
- (4) **Discharge by lapse of time:** A contract should be performed within a specific period as prescribed in the Law of Limitation Act., 1963. If it is not performed the party is deprived of remedy at law.
- (5) **Discharge by operation of law:** It may occur by death of the promisor, by insolvency etc.
- (6) **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract (Section 64).
- (7) A promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction he thinks fit. In other words, a contract may be discharged by remission. (Section 63).
- (8) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

Related Question: Explain any five circumstances under which contracts need not be performed with the consent of both parties. [Dec 21 7 Marks]

Answer:

1. Discharge by Mutual Agreement

(a) Novation:

(a) Novation means Substitution of a New Contract in the place of the Original Contract.

(b) This may happen either between - (i) the same parties, or (ii) different parties.

(c) Novation implies that a New Contract comes into existence. So, there must be mutual consent of all the parties to the Original Contract.

(d) Sec. 62: When the parties agree to substitute a new Contract, the original Contract need not be performed.

(b) Rescission:

(a) A contract is also discharged by rescission. when the parties to a contract agree to rescind it, the contract need not be performed.

(b) In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place. It is needless to point out that novation also involves rescission. Both in novation and in rescission, the contract is discharged by mutual agreement.

(c) Alteration:

(a) As in the case of novation and rescission, so also in a case where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed.

(b) In other words, a contract is also discharged by alteration. The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one. In other words, the distinction between novation and alteration is very slender.

2. **Promisee may waive or remit performance of promise (Section 63):** "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for Such performance or may accept instead of it any satisfaction which he thinks fit". In other words, a contract may be discharged by remission.
3. **Restoration of Benefit under a Voidable Contract (Section 64):** The law on the subject is "When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received".
4. **Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65):** When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."
5. **Effects of neglect of promisee to afford promisor reasonable facilities for performance (Section 67):** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-

performance caused thereby.

Q9. In light of provisions of the Indian Contract Act, 1872 answer the following:

Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery? [Dec 20, 2 Marks] [RTP May 21]

Answer:

According to section 51 of Indian Contract Act, 1872. When a contract consists of Reciprocal Promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready & willing to perform his reciprocal promise.

Such promises constitute concurrent conditions & the performance of one of the promises is conditional on the performance of the other. If one of the promises is not performed the other too need not to be performed.

Example: A and B contract for delivery of goods by A on a certain day, and payment by B upon such delivery. A need not deliver unless B is ready and willing to pay, and B need not pay unless A is willing and ready to deliver.

In the light of the above provision and example in the instant case also, S is not bound to fulfil his promise at the the time of delivery because on the delivery date Mr. R didn't pay the agreed price. i.e., promisee is not ready & willing to perform his reciprocal promise.

Q10. Explain what is meant by Supervening impossibility as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility? [July 21 - 5 Marks]

Answer:

Subsequent or Supervening impossibility (Becomes impossible after entering into contract)

1. When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.
2. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening.
3. It is also called the post-contractual impossibility.

4. The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

Obligation of person who has received advantage under void agreement, or contract that becomes void - Section 65 in The Indian Contract Act, 1872

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

Q11. Mr. X was a Disk Jockey at a five-star hotel bar. As per the contract, he is supposed to perform every weekend (i.e., twice a week). Mr. X will be paid Rs.1500 per day. However, after a month, Mr. X willfully absents himself from the performance.

- (i) Does the hotel have the right to end the contract?
- (ii) If the hotel sends out a mail to X that they are interested to continue the contract and X accepts, can the hotel rescind the contract after a month on this ground subsequently?
- (iii) In which of the cases - (termination of contract or continuance of contract) can the hotel claim damages that it has suffered as a result of this breach? [RTP Nov 21]

Answer:

By analyzing Section 39 of the Indian Contract Act 1872, it is understood that when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee)

- (a) To terminate the contract
- (b) To indicate by words or by conduct that he is interested in its continuance.

In either of the two cases, the promisee would be able to claim damages that he suffers. In the given case,

- (i) Yes, the hotel has the right to end the contract with Mr. X, the DJ.
- (ii) The hotel has the right to continue the contract with X. But once this right is exercised, they cannot subsequently rescind the contract on this ground subsequently.
- (iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

Unit- 5: Breach of Contract and its Remedies

Q.1 M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ` 11.50 lakhs. Due to labour strike, M Ltd. Could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ` 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872. [May 18, 6 Marks] [MTP Aug 18 Direct Question 5 marks] [RTP May 18] [MTP Oct 19, 6 Marks] [RTP Nov 19 Direct Question] [MTP March 18, 6 Marks]
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Answer:

1. Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract.
2. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which
 - > Naturally arose in the usual course of things from such breach
 - or
 - > Which the parties knew when they made the contract, to be likely to result from the breach of it.

Note: Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach.

3. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non- performance of the contract must be taken into account.

Conclusion

- (a) Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ` 1.25 lakh (i.e., ` 12.75 minus ` 11.50 = ` 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.
- (b) Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If

so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise, M Ltd is not liable.

Related Question: 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ` 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ` 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ` 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872. [MTP Oct 2018, 6 Marks - Based on Bottles] [MTP March 18, 6 Marks- Based on Bottles] [MTP April 19] [MTP April 19, 6 marks] [RTP Nov 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

Provision same as above i.e., Point 1 and Point 2.

The leading case on this point is "*Hadley v. Baxendale*" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

In the instant case

'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ` 500/- at the rate of 0.50 paise i.e., 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles (Rs4.50) and contracted selling price to 'Y' i.e (Rs.5) being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

If 'X' had not informed 'Z' of 'Y's contract

Then the amount of damages would have been the difference between the contract price (Rs. 4.50) and the market price (Rs. 5.25) on the day of default. In other words, the amount of damages would be ` 750/- (i.e. 1000 water bottles x 0.75 paise).

Related Direct Question: "When a contract has been broken, the party who suffers by such a breach is entitled to receive compensation for any loss or damage caused to him". Discuss.

[Module Back Question]

Answer: Same as Point 1 & Point 2 of Answer of Question No.1

In view of above, the statement given in the question seems to be incorrect.

Related Direct Question: What is the law relating to determination of compensation, on breach of contract, contained in section 73 of the Indian Contract Act, 1872 [RTP Nov 19]

Answer: Same as Point 1 Point 2 & Point 3 of Answer of Question No.1

Q.2 "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Discuss stating also the effect of anticipatory breach on contracts. [MTP March 19, 7 Marks] [Module Back Question] [MTP Oct 19, 7 Marks] [RTP Nov 18] [MTP Oct 20-7 Marks] [MTP Oct 21 - 7 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answers:

An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

Section 39 of the Indian Contract Act, 1872 deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

Effect of anticipatory breach: The promisee is excused from performance or from further performance. Further he gets an option:

- (1) To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or
- (2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

Q.3 What do you mean by quantum Meruit and state the rules relating to such contracts. [RTP May 20]

Answer:

1. **Meaning:** Quantum Meruit means as much as is merited (earned).

2. Quantum Meruit - Exception to Normal Rule:

- (a) Unless a party has performed his promise in full, he cannot claim performance from the other party.
- (b) To this rule, there are certain exceptions based on "Quantum Meruit".
- (c) When a person has done some work under a contract, and other party either - (i) repudiates the Contract, or (ii) some unexpected event happens making further performance of contract impossible, then the party who performed the work, can claim remuneration for work done.

3. When and to whom right arises?

- (a) The Original Contract must have been discharged, by the breach of a party by non-performance. If the Original Contract exists, the aggrieved party can resort to damages, he cannot claim quantum meruit remedy.
- (b) The Right to sue on Quantum Meruit lies with the party who is not at fault, i.e. who has performed his part of the Contract.

4. The claim for quantum meruit arises in the following cases:

- (a) When an agreement is discovered to be void or when a contract becomes void.
- (b) When something is done without any intention to do so gratuitously.
- (c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.
- (d) When one party abandons or refuses to perform the contract.
- (e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance

Q.4 "Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain. [Module Back question] [RTP May 21]

Answer:

Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculation and the necessity to convince outside parties.

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

In terms of Section 74 of the Act "where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, **whether or not actual damages or loss is proved** to have been caused thereby, to receive from the other party who has broken the contract, **a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.**

Explanation to Section 74

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is 'penalty' or "liquidated damages" provided the sum appears to be unreasonably high.

Sri Chunnilal vs. Mehta & Sons Ltd (Supreme Court)

Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then the court has powers to reduce the amount if it considers it reasonable to reduce.

Q5. A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract? [Dec 20, 2 Marks] [RTP May 21]

Answer:

Specific Performance:

(a) For breach of certain contracts, monetary compensation by way of damages may not constitute adequate remedy. The aggrieved party may not be interested in monetary compensation.

(b) The Court may, in such cases, direct the defaulting party to carry out the promise according to the terms of the Contract. This is called "Specific Performance" of the Contract.

Example: X agreed to sell an old painting to Y for 50,000. Subsequently, X refused to sell the painting. Here, Y may file a suit against X for the specific performance of the contract.

In the instant case

A refused to supply the agreed unique item to B, alternate of which is not available in the market. Therefore here, B may file a suit against A for the specific performance of the contract.

Unit - 6: Contingent and Quasi Contracts

Q.1 What is Contingent Contract? Discuss the essentials of Contingent Contract as per the Indian Contract Act, 1872. [Nov 18, 7 Marks] [RTP May 19] [RTP May 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Ans: Contingent Contracts [Sec. 31]: A Contingent Contract is a Contract -

(a) to do, or not to do something,

(b) if some event, collateral to such Contract, does or does not happen.

Example: A contracts to pay B ₹ 10,000 if B's house is burnt. This is a Contingent Contract.

Example: Contracts of Insurance, indemnity and guarantee.

Essentials of a contingent contract

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.

Example: 'A' promises to pay ` 50,000 to 'B' if it rains on first of the next month.

(b) The event referred to, is collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.

(c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.

Example 1: If A promises to pay B ` 100,000, if he so chooses, it is not a contingent contract. (In fact, it is not a contract at all). However, where the event is within the promisor's will but not merely his will, it may be contingent contract.

Example 2: If A promises to pay B ` 100,000 if A left Delhi for Mumbai on a particular day, it is a contingent contract, because going to Mumbai is an event no doubt within A's will, but is not merely his will.

(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

Example: 'A' agreed to sell his agricultural land to 'B' after obtaining the necessary permission from the collector. As a matter of course, the permission was generally granted on the fulfillment of certain formalities. It was held that the contract was not a contingent contract as the grant of permission by the collector was almost a certainty.

Related Question: Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts. [MTP Oct 20 - 5 Marks] [July 21 - 7 Marks]

Answer:

Meaning: Same as above

Rules as to Enforcement of Contingent Contracts:

Contingent upon					
Happening of Uncertain Future Event [Sec. 32]	Non-Happening of Uncertain Future Event [Sec. 33]	Future Conduct of a living person [Sec. 34]	Happening of Specified Uncertain Event within Fixed Time [Sec. 35]	Non-Happening of Specified Uncertain Event within Fixed Time [Sec. 35]	Impossible Events [Sec. 36]

These rules are explained below

Contingency	Enforcement	Example
Happening of an Uncertain Future Event [Sec.32]	<ul style="list-style-type: none"> Cannot be enforced by law unless and until such an event has happened. Where the event becomes impossible, such contracts become void. 	<ul style="list-style-type: none"> A makes a contract with B to buy B's horse if A survives C. This cannot be enforced by law unless and until C dies in A's life-time. A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse had been earlier offered, refuses to buy. Contract cannot be enforced by law, unless & until C refuses to buy the horse. A contracts to pay B a sum of money when B marries C. C dies without being married to B. Contract becomes void.
Non-Happening of an Uncertain Future Event [Sec.33]	Can be enforced when the happening of that event becomes impossible, and not before.	A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. Contract can be enforced when the ship sinks.
Happening of a Specified Uncertain Event within a fixed time [Sec.35]	Becomes void if - <ul style="list-style-type: none"> at the expiry of time fixed, such event has not happened, or before the time fixed, such event becomes impossible. 	A promises to pay B a sum of money if a certain ship returns within a year. The Contract may be enforced if the ship returns within the year, and becomes void, if the ship is burnt within the year.

<p>Non-happening of a Specified Uncertain Event within a fixed time [Sec.35]</p>	<p>Can be enforced by law -</p> <ul style="list-style-type: none"> • when time fixed has expired and such event has not happened, or • before expiry of the time fixed, it becomes certain that such event will not happen. 	<p>A promises to pay B a sum of money if a certain ship does not return within a year. The Contract may be enforced if the ship does not return within the year, or is burnt within the year.</p>
<p>Behaviour of a person at an unspecified time of future [Sec.34]</p>	<p>Event shall be considered to become impossible when such person does anything, which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.</p>	<p>A agrees to pay B a sum of money if B marries C. But C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.</p>
<p>Impossible Event [Sec.36]</p>	<p>Void, irrespective of whether or not the parties know of the impossibility of the event, at the time of entering into the agreement.</p>	<ul style="list-style-type: none"> • A agrees to pay B ₹ 1,000 if two parallel straight lines should enclose a space. Agreement is void. • A agrees to pay B ₹ 1,000 if B will marry A's daughter C and C was dead at the time of the agreement. Agreement is void.

Q.2 X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can X recover it from the Manager? **[Nov 19, 4 Marks]**

Answer:

Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

In the light of the above provisions, the manager must return the wallet to X, since X is entitled to retain the wallet found against everybody except the true owner.

Related Question: Explain the term 'Quasi Contracts' and state their Characteristics. [Back Question of Module] [RTP Nov 20] [MTP Nov 21 - 5 Marks]

Answer:

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

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

Related Question: Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872. [RTP Nov 19] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answers:

Meaning of Quasi Contract: Same as above

Circumstances which are identified as quasi contracts by the Indian Contract Act, 1872:

(a) **Claim for necessities supplied to persons incapable of contracting (Section 68):** If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Example: A supplies B, a lunatic, or a minor, with necessities suitable to his condition in life. A is

entitled to be reimbursed from B's property.

(b) Payment by an interested person (Section 69): A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. [Question and example on this point is given in question 4 of this unit]

(c) Obligations of a person enjoying benefits under non-gratuitous act (Section 70): Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefits thereof, then he is bound to make compensation to the other in respect of, or to restore the thing so done or delivered.

Example: A, a tradesman, leaves goods at B's house by mistake. B treats the goods his own. He is bound to pay for them.

(d) Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): Same as given in answer 2 of this unit.

(e) Money paid by mistake or under coercion (Section 72): "A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it".

Example: (i) A and B jointly owe ₹ 1,000 to C. A alone pays the full amount to C and B not knowing this fact, pays ₹ 1,000 again to C. C is bound to repay the amount to B. (ii) A Railway Company refuses to deliver certain goods to the Consignee except upon payment of an illegal charge for carriage. The Consignee pays the sum charged in order to take delivery of goods. He is entitled to recover so much of the charge as was illegally excessive.

Related Question: What is meant by Quasi-Contract? State any three salient features of a quasi-contract as per the Indian Contract Act, 1872. [Dec 21 - 5 Marks]

Answer:

Meaning of Quasi Contract: Same as above

Salient features of quasi contracts:

(a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.

(b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law, and

(c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

Q3. PQR, a hospital in Delhi, recruits Dr. A, on contract basis for a period of 3 months. The hospital management promises to pay Dr. A, a lumpsum amount of ` 1,00,000 if Dr. A test positive for noval corona virus (Covid 19) during the contract period of 3 months.

Identify the type of contract and highlight the rule of enforcement. Also, what will happen if Dr. A does not contract Covid 19. [RTP Nov 21]

Answer:

1. Section 31 of the Indian Contract Act, 1872 provides that "A contract to do or not to do something, if some event, collateral to such contract, does or does not happen" is a Contingent Contract.
2. Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.
3. In the instant case, the contract between PQR hospital & Dr. A is a Contingent Contract because the promisor, PQR hospital need to perform his obligation of paying Dr. A, the lumpsum amount of ` 1,00,000, only if he contracts with Covid 19 within a span of 3 months.
4. In Case, if Dr. A does not contract Covid 19, then the contract stands void automatically.

Q.4 P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D? [Back question of module]

Answer:

Yes, P can recover the amount from D. Section 69 states a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other.

In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his carriage was seized by him. Hence being an interested party P made the payment and can recover the same from D.