

Practical Case Studies on Indian Contract Act, 1872

Void Agreements

- Q.1. X agreed to become an assistant for 5 years to Y who was a doctor practicing at Chennai. It was also agreed that during the term of agreement X will not practice on his own account in Chennai. At the end of one year, X left the assistantship of Y and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether X could be restrained from doing so? *[CA Nov 2013]*

OR

'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. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so? *[CA May 2016]*

- Ans:** Section 27 of the Indian Contract Act, 1872, deals with 'Agreements in restraint of trade'. As per this section, an agreement which restrains a person to carry on a lawful business or profession is, to that extent, void.

But **an agreement of service** by which a person binds himself during the term of the agreement not to take service with anyone else, directly or indirectly, or to promote any business in direct competition with that of his employer is **not in "restraint of trade"**. In such cases, the agreement is valid.

According to the given facts, X agreed not to practice on his own account during the term of agreement with Y. But before the expiry of the term, X left Y and began to practice on his own account.

Therefore, as per the above provisions of Indian Contract Act, 1872 'X' can be legally restrained by an injunction from practicing on his own account within the agreed area.

- Q.2. Mr.Topi pays ₹ 10,00,000 to Mr.Gupta, a vivil servant employed in a Government Department in consideration of Mr. Gupta's promise that a Government contract which is at the disposal of his department will be placed with Mr.Topi. But, before this could be done, Mr.Gupta is transferred to another department. Mr.Topi now wishes to reclaim from Mr.Gupta ₹ 10,00,000. Will Mr.Topi succeed?
- Q.3. F, a father of a minor son and a daughter agreed to transfer guardianship of his children in favour of Mrs.O, an elderly lady and agreed not to revoke it for consideration. Subsequently, F filed a suit against Mrs.O for the recovery of his children. Mrs.O contends that the same should not be allowed as she had contractual rights of guardianship. Comment on the contention of Mrs.O in the light of the provisions of the Indian Contract Act, 1872.

Q4. 'N' an industrialist has been fighting a long drawn litigation with 'S' another industrialist. To support his legal campaign 'N' enlists the services of 'R' a legal expert stating that the amount of ₹ 5 lakhs would be paid, if 'R' does not take up the brief of 'S'. 'R' agrees, but at the end of the litigation 'N' refuses to pay. Decide whether 'R' can recover the amount promised by 'N' under the provisions of the Indian Contract Act, 1872.

Ans: The given question is based on one of the essential elements of a valid contract as stated under Section 10 of the Indian Contract Act, 1872. As per this section, "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". Thus, in order to be valid contract, such **agreement must not such which the law expressly declares to be either illegal or void.**

Certain agreements such as agreements in restraint of trade, marriage, legal proceedings etc., are void agreements since they have been identified as "opposed to public policy".

The given case is based on the **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 as they are **opposed to public policy**.

Hence, "R" in the given case cannot recover the amount of ₹ 5 lakhs promised by "N" because it is a void agreement and cannot be enforced by law.

Q5. State with reasons whether following agreements are valid or void:

- 1) 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.
- 2) 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.

Hint:

- 1) Section **20: Mistake of fact of both the parties** i.e. bilateral mistake and **is void**.

In this case, there is mistake of fact as to the existence of the subject-matter, i.e. with respect to the selling of the horse which was dead at the time of the agreement.

- 2) Section **27: 'Agreement in restraint of trade'** is void. **Exception:** Buyer can restrain the seller of goodwill to carry on the same business, provided the **terms and conditions are reasonable regarding the duration and place of restricting of carrying on the business**. Since in the given case, restraint to carry on business was forever and anywhere in India, so it is **un-reasonable** and thus **void**.

Quasi Contract

Q6. Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid?

OR

X rented out his house situated at Mumbai to Y for a rent of ₹ 10,000 per month. A sum of ₹ 5 lakhs, the house tax payable by X to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. Y pays the corporation, the sum due from X to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether Y is entitled to get the reimbursement of the said amount from X.

Ans: The given question deals with provision of quasi-contract under **Section 69** of the Indian Contract Act, 1872, which lays down that **“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.”**

In the given case Y has made the payment of lawful dues of X in which Y had an interest. Therefore, Y is entitled to get the reimbursement from X, even if there was no such agreement between X and Y.

Q.7. ‘A’ supplied necessaries to the wife of his friend who has become lunatic. ‘A’ had not entered into any agreement for the same with his friend or his wife. Now, ‘A’ wants to recover the cost of his supplies of necessaries from the estate of his friend. Can he do so?

Performance of Contract

Q.8. X, Y and Z are partners in a firm. They jointly promised to pay Rs. 3,00,000 to D. Y became 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 provision of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. *[CA May 2018]*

Ans: As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel anyone or more of such joint promisors to perform the whole of the promise.

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 a contrary intention appears from the contract.

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 ₹ 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 ₹ 20,000 from Y’s estate and ₹ 1,40,000 (half of the remaining 2,80,000) from Z.

Q.9. 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 ₹ 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 2019]*

Ans: 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.** It means that the performance by a stranger which is 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.10. 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?

Ans: Section 42 of the Indian Contract Act, 1872 requires that “when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. 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.”

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "**joint and several**". In the absence of express agreement to the contrary, the **promisee may compel anyone or more of the joint promisors to perform the whole** of the promise.

Section 43 also deals with the contribution among joint promisors. A joint promisor, who has performed the contract more than his share, may compel every other joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). 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.

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because XYZ are joint promisors.
 - (ii) Legal representative of X are 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.
- Q.11. A owes B two sums, one for ₹ 1,000 which is barred by limitation and another ₹ 2,500 which is not barred by the limitation of time. A has now paid ₹ 800 on account generally. After few days, B sued A for ₹ 2,500; but A pleads that the amount of outstanding debt is only ₹ 1,700 as the payment of ₹ 800 is settled against ₹ 2,500 only as the earlier debt of ₹ 1,000 has been time barred cannot realized. Comment on the plea of A.

Discharge of Contract

- Q.12. Mr. X and Mr. Y entered into a contract on 1st August, 2019, 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 ₹ 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Heavy flood came on 2nd August, 2019 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, 2019 for which Mr. Y did not agree. On 1st September, 2019, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there in the

preview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000, which he had paid as advance in the 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. [CA Nov 2018]

Ans: Subsequent or Supervening impossibility (Becomes impossible after entering into contract): When performance of promise becomes impossible or illegal by occurrence of an unexpected event or a change beyond the control of the parties, the contract becomes void e.g. change in law, destruction of subject-matter, etc.

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 heavy flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the contract has become void and discharged. Thereby, 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.

Q.13. Mr. Rich aspired to get a self- portrait made by an artist. He went to the workshop of Mr. Kalakar an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. Kalakar agreed to the offer and asked for ₹ 50,000 as full advance payment for the above creative work. Mr. Kalakar 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. Kalakar paralyzed and would not be able to paint for near future. Mr. Kalakar had a son Mr. Sonu who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in the light of Indian Contract Act, 1872?

- (i) Can Mr. Rich ask Mr. Sonu to complete the artistic work in lieu of his father?
- (ii) Could Mr. Rich ask Mr. Sonu for refund of money paid in advance to his father?

[CA May 2019]

Ans: 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 Mr. Kalakar becoming paralyzed, Mr. Rich cannot ask Mr. Sonu to complete the artistic work in lieu of his father Mr. Kalakar.
- (ii) Further, as per section 65 of the Indian Contract Act, 1872, where an agreement is discovered to be void or where a contract becomes void, any person who has received any advantage under such agreement/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. Kalakar has become void because of paralysis to Mr. Kalakar. So, Mr. Rich can ask Mr. Sonu for refund of money paid in advance to his father, Mr. Kalakar.

Q.14. Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872.

Ans: Subject to the provisions of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful, subsequent to its formation, the contract becomes void. This is termed as ‘supervening impossibility’ i.e. impossibility which does not exist at the time of making the contract but which arises subsequently.

However, the promisor must perform his promise unless the performance has become absolutely impossible. The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract.

In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This **difficulty in performance cannot be considered as impossibility of performance**. Hence, Mr. Akhilesh is **liable** to Mr. Shekhar for non- performance of contract.

Q.15. M owes money to N under a contract. It is agreed between M, N and O that N shall henceforth accept O as his debtor instead of M. Referring to the provisions of the Indian Contract Act, 1872, state whether N can claim payment from O?

Ans: The given question deals with the concept of “**Novation of Contract**”; involving new parties to the same contract.

As per Section 62 of the Indian Contract Act, 1872, a contract need not be performed when the parties to it agree to substitute a new contract for it or to rescind or alter it.

Here, in the given problem, **novation has taken place** as one of the parties has been replaced with a third party. Therefore, the **original contract between M and N is discharged** and now, **N can claim the money from O**.

Breach of Contract and its Remedies

Q.16. Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmedabad for supply of Urad Dal on 10.11.2019 at a contracted price of ₹ 40 per kg. The order was for the supply of 10 tonnes within a month’s time viz. before 09.12.2019. On 04.12.2019 Mr. Shah wrote a letter to Mr. Ramaswamy stating that the price of Urad Dal was sky rocketing to ₹ 50 per kg. and he would not be able to supply as per original contract. The price of Urad Dal rose to ₹ 53 on 09.12.2019. Advise Mr. Ramaswamy citing the legal position.

Ans: The stated problem of Mr. Ramaswamy and Mr. Shah falls under the head ‘Anticipatory breach of contract’ defined in Section 39 of the Indian Contract Act, 1872 and also dealt with in the case of **Frost vs. Knight**.

As per this provision, anticipatory breach of contract happens when a party to a contract declares his intention of not performing the contract **before the performance is due**.

In such case, the promisee may either:

(i) Treat the contract as **repudiated** and claim damages for any loss which naturally arose in the ordinary course of business as **the difference between the contracted price and**

the price as on the date of breach of contract, or

- (ii) Treat the contract as **subsisting and wait** till the due date of performance. In such case, if the promisor still does not perform the contract on the due date, the promisee who is the injured party can claim damages for any loss which naturally arose in the ordinary course of business as the **difference between the contracted price and the price as on the due date of performance.**

As per details in the problem, the contracted price of ₹ 40 per kg on 10.11.2019 rose to ₹ 50 per kg as on 4.12.2019 and finally to ₹ 53 per kg, on 09.12.2019.

In the light of the above provisions, the position will be that

- (i) Mr. Ramaswamy can repudiate the contract on 04.12.2019 and can claim damages of ₹ 10 per kg viz. ₹ 1,00,000, or
(ii) He could wait till 09.12.2019 and claim damages @ ₹ 13 per kg viz. ₹ 1,30,000.

Q.17. Dattu Ltd. contracts with Gupta Traders to make and deliver certain machinery to them by 30.6.2014 for ₹ 21.50 Lakhs. Due to labour strike, Dattu Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for ₹ 22.75 lakhs. Gupta Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with Dattu Ltd. and were compelled to pay compensation for breach of contract. Advise Gupta Traders the amount of compensation which it can claim from Dattu Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

Ans: The problem asked in this question is based on the provision of Section 73 of the Indian Contract Act, 1872 related to recovery of damages caused by breach of contract.

Section 73 lays down that when a contract is breached, the party who suffers is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him

- which arose naturally in the usual course, or
- which the parties knew when they made the contract to be likely result from the breach.

Applying the above principle of law to the given case, Dattu Ltd. is obliged to compensate for the loss of ₹ 1.25 lakhs (i.e. ₹ 22.75 lakhs – ₹ 21.50 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Gupta Traders were compelled to make to Zenith Traders, it depends upon the fact **whether Dattu Ltd. knew about the contract of Gupta Traders for supply of the contracted machinery to Zenith Traders** on the specified date. If so, Dattu Ltd. is also obliged to reimburse the compensation which Gupta Traders had to pay to Zenith Traders for breach of contract. Otherwise, Dattu Ltd. is not liable for that.

Q.18. '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.

What would be the amount of damages which 'X' could claim from 'Z' in the circumstances?

What would be your answer if 'Z' had not been informed about 'Y's contract'?

Ans: The problem asked in this question is based on the provisions of recovery of damages as contained in Section 73 of the Indian Contract Act, 1872.

Section 73 lays down that when a contract is breached, the party who suffers is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him

- which arose naturally in the usual course, or
- which the parties knew when they made the contract to be likely result from the breach.

The leading case on this point is *Hadley v. Baxendale* in which it was decided by the Court that only if the special circumstances under which the contract was made were communicated and made known to the parties, the damages would be the amount of injury which would result from the breach of contract under these special circumstances.

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 damages from 'Z' of ₹ 500 (@ 0.50 paise for 1000 water bottles) which is difference between the purchase price of water bottles and contracted selling price to 'Y' 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 and the market price on the day of default. In other words, the amount of damages would be ₹ 750 (i.e. 1000 water bottles x 0.75 paise).

