

**CA Foundation
LAW
ICAI Important Questions**

Q.1)

A shopkeeper displayed a pair of dresses in the showroom, and a price tag of ₹5,000 was attached to the dress. Ms Priya looked at the tag and rushed to the cash counter. Then she asked the shopkeeper to receive the payment and pack up the dress. The shopkeeper refused to hand over the dress to Ms Priya in consideration of the price stated in the price tag attached to the dress. Ms Priya seeks your advice on whether she can sue the shopkeeper for the above cause under the Indian Contract Act, 1872.

(Nov. 2018, June 2023 MTP (M))

Ans.

As per the provision of the Indian Contract Act, 1872, “an invitation to offer” means the person is inviting the other person to make an offer. The offeror’s objective is to send out an invitation that he is willing to deal with any person who is ready to enter into a contract with him.

Fact of the case:

A shopkeeper displayed a pair of dresses in the showroom, and a price tag of ₹5,000 was attached to the dress. Ms Priya looked at the tag and rushed to the cash counter. Then she asked the shopkeeper to receive the payment and pack up the dress. The shopkeeper refused to hand over the dress to Ms Priya in consideration of the price stated in the price tag attached to the dress.

Conclusion:

Here, Ms Priya cannot sue the shopkeeper as the mere display of price tag to the dress in the showroom is an invitation to offer. This implies that it is up to the shopkeeper that he wants to sell that dress or not and to whom he wants to sell it. The shopkeeper has every right to make the decision to whom he will sell the dress.

Q.2)

Mr B makes a proposal to Mr S by post to sell his house for ₹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 sent a telegram withdrawing his acceptance. Telegram reaches Mr B on 19th April 2020.

- a) On which date, the offer made by Mr B will complete?
- b) Discuss the validity of acceptance.
- c) What would be the validity of acceptance if the letter of revocation and letter of acceptance reached together?

(Jan. 2021)

Ans.

- a) As per the provision of the Indian Contract Act, 1872, the communication of an offer is complete when it comes to the knowledge of the person to whom it is made. If a proposal is made by post, the communication will be completed when the letter containing the proposal reaches the person to whom it is made. Further, the receiving of the letter is sufficient.

Mr B makes a proposal by post to Mr S to sell his house. The letter was posted on 10th April 2020, and the letter reaches Mr S on 12th April 2020, but he reads the letter on 13th April 2020. Thus, the offer made by Mr B will complete on the day when Mr S received the letter, i.e., 12th April 2020.

- b) The communication of acceptance is complete on two different dates on one date as against the proposer and on another date as against the acceptor.

When a proposal is accepted by a letter sent by post, the communication of acceptance will be completed against the proposer when the letter of acceptance is posted and against the acceptor when the letter reaches the proposer.

Mr S accepts Mr B's proposal and sent his acceptance by post on 16th April 2020, when the letter is posted. As against the acceptor, the acceptance will be complete when the letter reaches Mr B, i.e. 20th April 2020.

- c) **Revocation of Acceptance:** The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror. If the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute. The telegram for the revocation of acceptance reached Mr B on 19th April 2020, i.e. before the letter of acceptance of the offer. Hence, the revocation is absolute. Therefore, acceptance of an offer is invalid.

Q.3)

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

(ICAI SM, Jan. 2021, May 2018, RTP Nov. 2019, June 2022, Dec 2022)

Ans.

As per the provision of the Indian Contract Act, 1872, the agreement without consideration is not valid. But, in certain conditions, an agreement without consideration is valid and enforceable:

- 1) **Natural love and affection:** There is no consideration required if the agreement is made by natural love and affection. The contracts, in this case, shall be valid if:
 - i) There is an agreement in writing.
 - ii) It is registered.
 - iii) It is made on account of natural love and affection.
 - iv) It is made between parties standing in near relation to each other.
- 2) **Compensation for past voluntary services:** When the promisor promises to pay for an act done by a promisee in the past for the promisor, the act so performed by a promisee for the promisor shall become a consideration for the amount to promised.
- 3) **Promise to pay the time-barred debt:** As per the Limitations Act, 1963, if a debt is not claimed within three years, it cannot be recovered after that. But, a promise to pay the time-barred debt is enforceable. The promise should be in writing and signed by the person making it or by his authorized agent. The promise maybe for the whole or any part of the debt.
- 4) **Agency:** No consideration is necessary to create an agency. An agent can be appointed without consideration, and the acts are done by him shall be valid.
- 5) **Completed gift:** Gift made does not require any consideration. It is immaterial whether or not the party stands in the near relationship.
- 6) **Bailment of Goods:** Bailment of goods created required no consideration.
- 7) **Charity:** If a promisee undertakes the liability on the promise of a person to contribute to charity, there shall be a valid contract.

Q.4)

Mr Shyam owned a motor car. He approached Mr Vikas and offered to sell his motor car for ₹3lakhs. Mr Shyam told Mr Vikas 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 Vikas agreed with the proposal of Mr Shyam and took delivery of the car by paying ₹3 lakhs to Mr Shyam. After ten days, Mr Vikas came back with the car and stated that the claim made by Mr Shyam 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 Vikas can rescind the contract in the above ground.

(RTP Nov. 2020, RTP May 2021, ICAI SM)

Ans.

As per the provision 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.

A party to the contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position he would have been if the representation made had been true.

Also, if in a contract, the consent of a person is caused by misrepresentation or silence (which amounts to fraud), then such a contract shall not be voidable if such person had the means of discovering the truth with ordinary diligence.

Facts of the case:

Mr Shyam owned a motor car. He approached Mr Vikas and offered to sell his motor car for ₹3,00,000. Mr Shyam told Mr Vikas 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 Vikas agreed with the proposal of Mr Shyam and took delivery of the car by paying ₹3,00,000 to Mr Shyam. After ten days, Mr Vikas came back with the car and stated that the claim made by Mr Shyam regarding fuel efficiency was not correct and, therefore, there was a case of misrepresentation.

Conclusion:

In the given case, both the fuel meter and the speed meter of the car were working properly. Mr. Vikas had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr Vikas cannot rescind the contract on the above ground.

Q.5)

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?

(Nov 2021 RTP, June 2022)

Ans.

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. 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.

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.

Facts of the case:

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.

Conclusion:

Hence, in the present case, Rahul is not liable to repay ₹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.6)

Pradeep sells by auction to Rakesh a horse which Pradeep knows to be unsound. The horse appears to be sound, but Pradeep knows about the unsoundness of the horse. Is this contract valid in the following circumstances:

- i) If Pradeep says nothing about the unsoundness of the horse to Rakesh.
- ii) If Pradeep says nothing about it to Rakesh who is Pradeep's son.
- iii) If Rakesh says to Pradeep "If you do not deny it, I shall assume that the horse is sound."
- iv) Pradeep says nothing.

(MTP June 2023)**Ans.**

According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,

- i) 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.
- ii) This contract is not valid since as per section 17, it becomes Pradeep's duty to tell Rakesh about the unsoundness of the horse because a fiduciary relationship exists between Pradeep and his son Rakesh. Here, Pradeep's silence is equivalent to speech and hence amounts to fraud.

- iii) This contract is not valid since as per section 17, Pradeep's silence is equivalent to speech and hence amounts to fraud.

Q.7)

Shital was a classical dancer. She entered into an agreement with Sharad Vidya Mandir for 50 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ₹8,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

- i) Whether the management of Sharad Vidya Mandir has right to terminate the contract?
- ii) If the management of Sharad Vidya Mandir informed Shital about its continuance, can the management still rescind the contract after a month on this ground subsequently?
- iii) Can the Sharad Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases?

(RTP Dec 2023, June 2022)

Ans.

Section 39 of the Indian Contract Act, 1872 provides that 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 had signified, by words or conduct his acquiescence in its continuance. Further, in terms of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case,

- i) Since, Shital could not perform as per the terms of contract, Sharad Vidya Mandir can terminate the contract.
- ii) In the second situation, the management of Sharad Vidya Mandir informed Shital about the continuance of the contract. Hence, the management cannot rescind the contract after a month on this ground subsequently.
- iii) As per Section 75, Sharad Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

Q.8)

X entered into a contract with Y to supply him 1,000 water bottles @ ₹5 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 the 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. What would be your answer if Z had not been informed about Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872.

(RTP Nov. 2020, ICAISM, May 2022 RTP, May 2018)

Ans.

As per the provision of the Indian Contract Act, 1872, an actual breach of contract is a case of refusal to perform on the scheduled date. The party who is injured by the breach of a contract

may bring an action for damages. When one party to the contract refuses to perform, the other party can take the damages:

- ✓ Which naturally arose in the usual course of things from such breach (ordinary damages), or
- ✓ Which the parties knew when they made the contract to be likely to result from the breach of it (special damages).

Facts of the case:

X entered into a contract with Y to supply him 1,000 water bottles @ ₹5 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 the 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.

Conclusion:

In the present case, X had intimated to Z that he was purchasing water bottles from him for the purpose of performing his contract with Y. Z has the knowledge of the special circumstances. Therefore, X is entitled to claim from Z ₹500, i.e., the difference between the procuring price of water bottles and the contracted selling price to Y (1000 water bottles × ₹0.50)

If X had not informed Z of Y 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 (water bottle × ₹0.75)

Q.9)

Amit 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 Amit, saying that it did not belong to him. Can Amit recover it from the manager?

Ans.

As per the provision of the Indian Contract Act, 1872, a finder of lost goods has:

- 1) To take proper care of the property as a man of ordinary prudence would take.
- 2) No right to appropriate the goods.
- 3) To restore the goods if the owner is found.

Fact of the case:

Amit found a wallet in a restaurant. He enquired of all the customers present there, but the true owner could not be found. Amit handed over the wallet 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 Amit, saying that it did not belong to Amit.

Conclusion:

In the present case, Amit can recover the wallet from the Manager because Amit was the finder of the wallet, and as a finder, he has to take care of the wallet, as a man of ordinary prudence would do, till its true owner is found. The manager must return the wallet to Amit as he was entitled to retain the wallet found against everybody except the true owner.

Q.10)

Yanish and Sejal are engaged in a business having the same nature. Yanish stands surety for Sejal for any amount which Nirbhay may lend to Sejal from time to time during the next 6 months, subject to a maximum of ₹1,00,000. After 3 months, Yanish revokes the guarantee when Nirbhay had lend ₹40,000 to Sejal. Decide whether Yanish is discharged from all liabilities to Nirbhay for any subsequent loan? Would your answer differ in the case of Sejal makes default in paying back to Nirbhay the money already borrowed, i.e., ₹40,000?

(Nov 2015, Nov 2017, Dec 2021)

Ans.

As per the provisions of the Indian Contract Act, 1872, a continuing guarantee can be revoked at any time by the surety as to future transactions by giving notice to the creditor. The liability of the surety remains the same for the previous transactions.

Facts of the case:

Yanish and Sejal are engaged in a business having the same nature. Yanish stands surety for Sejal for any amount which Nirbhay may lend to Sejal from time to time during the next 6 months, subject to a maximum of ₹1,00,000. After 3 months, Yanish revokes the guarantee when Nirbhay had lend ₹40,000 to Sejal.

Conclusion:

In the present case, Yanish is discharged from all the liabilities to Nirbhay for any subsequent loan.

In the second case, Yanish shall be liable to Nirbhay for ₹40,000 on the default of Sejal because the loan was taken before the revocation of the guarantee by Yanish.

Q.11)

- i) Mr CB was invited to guarantee an employee Mr BD who was previously dismissed for dishonesty by the same employer. This fact was not told to Mr CB. Later on, the employee embezzled funds. Whether CB is liable for the financial loss as sure under the provisions of the Indian Contract Act, 1872?
- ii) Mr X agreed to give a loan to Mr Y on the security of four properties. Mr A gave a guarantee against the loan. Actually, Mr X gave a loan of a smaller amount on the security of three properties. Whether Mr A is liable as surety in case, Mr Y failed to repay the loan?

(Nov 2020, May 2022)

Ans.

- i) As per the provisions of the Indian Contract Act, 1872, any guarantee which the creditor has obtained by means of keeping silent as to material circumstances is invalid.

Facts of the case:

Mr CB was invited to guarantee an employee, Mr BD, who was previously dismissed for dishonesty by the same employer. This fact was not told to Mr CB. Later on, the employee embezzled funds.

Conclusion:

In the present case, Mr CB shall not be liable for the financial loss as the surety because the guarantee from Mr CB was obtained by concealing the previous misconduct of Mr BD, which is a material fact.

- ii) As per the provisions of the Indian Contract Act, 1872, if the creditor makes any variance without the consent of the surety, then surety is discharged to the transactions subsequent to the change.

But, where the variation is beneficial to the surety, then the surety is not discharged from his liability and shall be liable to the amount subsequent to the variation.

Facts of the case:

Mr X agreed to give a loan to Mr Y on the security of four properties. Mr A gave the guarantee against the loan. Actually, Mr X gave a loan of a smaller amount on the security of three properties. Mr Y failed to repay the loan.

Conclusion:

In the present case, Mr A shall be liable as a surety for the loan amount of three properties because the variation in the contract of Mr X and Mr Y was beneficial for Mr A.

(Leading case law: M.S. Anirudhan v Thomco's Bank Ltd. AIR 1963 SC 746)

Q.12)

Surendra guarantees Virendra for the transactions to be done between Virendra & Jitendra during the month of March. Virendra supplied goods of ₹30,000 on 1st March and of ₹20,000 on 3rd March to Jitendra. On 5th March, Surendra died in a road accident. On 10th March, being ignorant of the death of Surendra, Virendra further supplied goods of ₹40,000. On default in payment by Jitendra on the due date, Virendra sued on legal heirs of Surendra for recovery of ₹90,000. Describe whether legal heirs of Surendra are liable to pay ₹90,000 under the provisions of the Indian Contract Act 1872. What would be your answer if the estate of Surendra is worth ₹45,000 only?

(May 2022 RTP)

Ans.

As per the provisions of the Indian Contract Act, 1872, in the absence of a contract to the contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, is liable for those transactions which had already taken place during the lifetime of the deceased. Surety's estate would not be liable for the transactions taking place after the death of surety, even if the creditor had no knowledge of surety's death.

Facts of the case:

Surendra guarantees Virendra for the transactions to be done between Virendra & Jitendra during the month of March. Virendra supplied goods of ₹30,000 on 1st March and of ₹20,000 on 3rd March to Jitendra. On 5th March, Surendra died in a road accident. On 10th March, being ignorant of the death of Surendra, Virendra further supplied goods of ₹40,000. On default in payment by Jitendra on the due date, Virendra sued on legal heirs of Surendra for recovery of ₹90,000.

Conclusion:

On the basis of the above, it can be said in case of death of surety ('Surendra'), his legal heirs are liable only for those transactions which were entered before 5th March, i.e. for ₹50,000. They are not liable for the transaction done on 10th March, even though Virendra had no knowledge of the death of Surendra.

Further, if the worth of the estate of the deceased is only ₹45,000, the legal heirs are liable for this amount only.

Q.13)

Anmol bailed 50 kg of high-quality sugar to Srinath, who owned a Kirana shop, promising to give ₹200 at the time of taking back the bailed goods. Srinath's employee, unaware of this, mixed the 50 kg of sugar belonging to Anmol with the sugar in the shop and packaged it for sale

when Srinath was away. This came to light only when Anmol came asking for the sugar he had bailed with Srinath, as the price of the specific quality of sugar had trebled. What is the remedy available to Anmol under the Indian Contract Act, 1872?

(ICAI SM, Nov 2018, Nov 2022 RTP)

Ans.

As per the provisions of the Indian Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Facts of the case:

Anmol bailed 50 kg of high-quality sugar to Srinath, who owned a Kirana shop, promising to give ₹200 at the time of taking back the bailed goods. Srinath's employee, unaware of this, mixed the 50 kg of sugar belonging to Anmol with the sugar in the shop and packaged it for sale when Srinath was away. This came to light only when Anmol came asking for the sugar he had bailed with Srinath, as the price of the specific quality of sugar had trebled.

Conclusion:

In the present case, Srinath's employee mixed high-quality sugar bailed by Anmol and then packaged it for sale. The sugar, when mixed, cannot be separated. As Srinath's employee has mixed the two kinds of sugar, he (Srinath) must compensate Anmol for the loss of his sugar.

Q.14)

Mrs Shweta delivered her silver jewellery to Mr Amit, a goldsmith, for the purpose of making a new silver plate out of it. Every evening she used to receive the unfinished good (silver plate) to put it into a box kept at Mr Amit's shop. She kept the key of that box with herself. One night, the silver plate was stolen from that box. Whether the possession of the goods delivered constitute the contract of bailment?

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(ICAI SM)

Ans.

As per the provisions of the Indian Contract Act, 1872, bailment means the delivery of goods from one person to another for some purpose, upon a contract that they shall be returned or disposed of according to the direction of the person delivering them after the accomplishment of such purpose.

As per the provisions of the Indian Contract Act, 1872, the delivery to the bailee maybe done by doing anything which shall put the goods in possession of the bailee or any person authorised to hold them on his behalf. Thus, the delivery is necessary to constitute the bailment.

Facts of the case:

Mrs Shweta delivered her silver jewellery to Mr Amit, a goldsmith, for the purpose of making a new silver plate out of it. Every evening she used to receive the unfinished good (silver plate) to put it into a box kept at Mr Amit's shop. She kept the key of that box with herself. One night, the silver plate was stolen from that box.

Conclusion:

In the given case, the mere keeping of the box at Mr Amit's shop cannot be considered as the delivery as Mrs Shweta took away the key herself. Therefore, there is no contract of bailment as Mrs Shweta did not deliver the complete possession of the goods by keeping the keys with herself.

Q.15)

Rahul, a transporter, was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market, where he was stranded, fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority?

(ICAI SM, May 2018 RTP, Nov 2021 RTP, May 2018)

Ans.

As per the provisions of the Indian Contract Act, 1872, an agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Facts of the case:

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Conclusion:

Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Q.16)

Aarthi is the wife of Naresh. She purchased some sarees on credit from M/s Rainbow Silks, Jaipur. M/s Rainbow Silks, Jaipur demanded the amount from Naresh. Naresh refused. M/s Rainbow Silks, Jaipur filed a suit against Naresh for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether M/s Rainbow Silks, Jaipur would succeed?

(ICAI SM)

Ans.

As per the provisions of the Indian Contract Act, 1872, an agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent of her husband). If the wife lives with her husband, there is a legal presumption that a wife has the authority to pledge her husband's credit for necessities. But the legal presumption shall be invalid in the following cases:

- i) Where the goods purchased on credit are not necessities.
- ii) Where the wife is given sufficient money for purchasing necessities.
- iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.
- iv) Where the trader has been expressly warned not to give credit to his wife.

Facts of the case:

Aarthi is the wife of Naresh. She purchased some sarees on credit from M/s Rainbow Silks, Jaipur. M/s Rainbow Silks, Jaipur demanded the amount from Naresh. Naresh refused. M/s Rainbow Silks, Jaipur filed a suit against Naresh for the said amount.

Conclusion:

In the present case, M/s Rainbow Silks shall recover the said amount from Naresh if sarees purchased by Aarthi are necessities for her.

Q.17)

Ramu has given authority to Prem to buy certain goods at the market rate. Prem buys the goods at a higher rate than the market rate. However, Ramu accepted the purchase in spite of the higher rate. Afterwards, Ramu comes to know that the goods purchased belonged to Prem himself. Decide whether Ramu is bound by ratification done.

(May 2022)**Ans.**

As per the provisions of the Indian Contract Act, 1872, no valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

If, however, the alleged principal is prepared to take the risk of what the purported agent has done, he can choose to ratify without full knowledge of the facts.

Facts of the case:

Ramu has given authority to Prem to buy certain goods at the market rate. Prem buys the goods at a higher rate than the market rate. However, Ramu accepted the purchase in spite of the higher rate. After wards, Ramu comes to know that the goods purchased belonged to Prem himself.

Conclusion:

In the present case, Ramu is not bound by the ratification as Ramu has no knowledge of the fact that the goods purchased by him were of Prem's. But, if Ramu is willing to take the risk, then he can choose to ratify such an act.

Q.17)

R gives his umbrella to M during the rainy season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips, and the umbrella is badly damaged. Who bears the loss and why?

(ICAI SM, Nov 2020 RTP, Nov 2022(Modified))**Ans.**

As per the provisions of the Indian Contract Act, 1872, where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Facts of the case:

R gives his umbrella to M during the rainy season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips, and the umbrella is badly damaged.

Conclusion:

In the present case, M shall have to bear the loss since he failed to return the umbrella within the stipulated time.

Q.18)

Vikas borrowed a sum of ₹10lakhs from Jyoti. Vikas appointed Jyoti as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterwards, Vikas revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Vikas is lawful?

(ICAI SM, May 2014, Nov 2019, Jan 2021, May 2021 RTP)**Ans.**

As per the provisions of the Indian Contract Act, 1872, an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

The rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

Facts of the case:

Vikas borrowed a sum of ₹10 lakhs from Jyoti. Vikas appointed Jyoti as his agent to sell his land and authorized her to appropriate the amount of loan out of the sale proceeds. Afterwards, Vikas revoked the agency.

Conclusion:

In the present case, when Vikas appointed Jyoti as his agent to sell his land and authorized her to appropriate the amount of loan out of the sale proceeds, interest was created in favour of Jyoti, and the said agency is not revocable. The revocation of agency by Vikas is not lawful.



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