

Questions.

① "To form a valid contract, consideration must be adequate".
Comment.

Consideration,

→ 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 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. Madden*). Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made. 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.

② 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 ~~Sh~~ Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act 1872.

Invitation to offer.

→ Invitation to offer: The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer. The display of articles with a price in it in a self-service shop is merely an invitation to offer.

The display of articles with a price in it in a shop is in no sense an offer for sale, the acceptance of which constitutes a contract. 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.

- ③ Explain the concept of 'misrepresentation' in matters of contract. Sohan induced Sujaj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Sujaj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After few days the motorcycle, ~~sohan proposed to get it~~ did not work at all. Now Sujaj wants to rescind the contract. Decide giving reasons whether Sujaj can rescind the contract?

→ Misrepresentation: According to Section 18 of the Indian Contract Act 1872, misrepresentation is:

- Misrepresentation.
- When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
 - When there is any breach of duty by a person which brings an advantage to the person committing it by misleading another to his prejudice.
 - When a party causes, however innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject to the agreement.

The aggrieved party, in case of representation by the other party, can avoid ~~to~~ ^{or} rescind the contract [Section 19, Indian Contract Act, 1872]. 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 ways affirms it. Accordingly, in the given case, Sujaj 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.

Undue Influence.

④

Discuss the essentials of Undue Influence as per the Indian Contract Act 1872.

→ The Essentials of Undue Influence as per The Indian Contract 1872 are the following:

1] Relation between the parties :- A person can be influenced by the other when a near relation between the two ends exists.

2] Position to dominate the will :- Relation between the parties exists in such a manner that one of them is in a position to dominate the will of the other. 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 ~~the~~ as in case of master and servant doctor and patient and etc.

b] Fiduciary relationship :- Where relation of trust & confidence, exists between the parties to a contract. Such type of relationship exists between the father & son, solicitor & client, creditor & debtor etc.

c] Mental distress :- An undue influence can be used against to person to get his ~~consent~~ 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.

3] 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.

4] 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.

⑤

A sends an offer to B to sell his second-car for ₹ 1,40,000 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 shall be the position if B communicates his acceptance after one week?

Acceptance →

Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amounts to acceptance, it cannot be taken as valid acceptance. So in the given problem, if B remains silent, it does not amount to acceptance.

The acceptance must be made within the time limit prescribed by the offer. ~~The~~ The acceptance of an offer, the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract.

⑥

What is the law relating to determination of compensation on breach of contract, contained in section 73 of the Indian Contract Act, 1872?

Breach of contract

→ Compensation on Breach of Contract: Section 73 of the Indian Contract Act, 1872 provides that 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. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. The explanation to the section further provides 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.

Case study :-

⑦ Mahesh asked Ankit if he can use Ankit's house which is otherwise vacant. Ankit agreed on the condition that Mahesh should pay some charges to Anmol (who is Ankit's brother). Ankit agreed for it & signed an agreement under which he promised to pay ₹ 50,00 to Anmol till the time he is in possession of Ankit's house. Later on Mahesh refuses to pay the amount on the ground that he is not getting any consideration from Anmol to whom he has made promise to pay money. Can Anmol recover money from Mahesh?

→ • **Provision :-** According to the 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 obtained from doing, or does or abstains from doing or promises to do or ~~do~~ abstain from doing something, such an act or abstinence or promise is called consideration for the promise.

Consideration may move from promisee or any other person who is not a party to the contract Act. In other words, there can be a stranger to a consideration but not stranger to a contract.

• **Fact of the case :-** In the given case, Mahesh asked Ankit to use his vacant house to which Ankit agreed on the condition that Mahesh should pay some charges to Anmol, who is brother of Ankit. Both of them agreed and an agreement was signed under which Mahesh promised to pay Rs. 5000 to Anmol till the time he is in possession of Ankit's house. Later Mahesh refuses to pay the amount on the ground that he is not getting any consideration from Anmol to whom he has made promise to pay money.

• **Conclusion :-** Here, as consideration may move from anyone though Mahesh is not getting anything from Anmol, he is getting consideration from Ankit in the form of using his house.

Therefore, though Anmol is not a party to the contract, he can recover money from Mahesh.

⑤ Rahul is a small trader who intentionally spoke on a phone call with his friend to create an impression that he is owner of a shopping mall. all this conversation was made while Rahul was with his friend Sonali later Rahul asked Sonali for marriage and Sonali agreed believing that Rahul is a owner of a shopping mall. Before their marriage Sonali came to know about truth as a result she refused to marry Rahul, is Sonali entitled to do so?

→ • Provision :- As per the provisions of the Indian Contract Act 1872, mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the other. Mistake as may be either Bilateral or Unilateral. A unilateral mistake is generally not allowed as a defense in avoiding a contract. But in certain cases, the consent given by a party under an error or mistake which is so fundamental as goes to the root of the agreement. In such case the agreement is void. Mistake as to the identity of the person contracted with also makes the contract void.

• Facts of the case :- In the above case, Rahul intentionally spoke on a phone call with his friend to create an impression that he is owner of a shopping mall, while he was with his friend Sonali. So, Sonali agreed to marry with Rahul believing that he is owner of a shopping mall. But before their marriage she came to know the truth that Rahul is a small trader. So she refused to marry him.

• Conclusion : Here, there is mistake caused by Sonali as to the identity of Rahul which turned the contract void. Thus, Sonali can refuse to marry Rahul contract being void.

(9) Kamala promised to marry Suresh if he helps Kamala in getting divorce from his husband who is a regular drinker of alcohol. Suresh appoints an advocate to fight on Kamala's behalf. Afterward, Court grants divorce to Kamala and her husband. When Suresh asks Kamala to marry him, she refuses. Can Kamala be compelled to marry Suresh, and if not then, can Suresh get back the money he spent on fighting the case?

→ Provision :- According to the provisions of the Indian Contract Act, 1872, agreements inferring with marital duties are opposed to public policy. An agreement in ~~cont~~ contemplation of divorce is immoral and thus it is void-ab-initio. The rule of restitution says, benefits if any received under a contract which becomes void, it must be restored. The principle of restitution is that a person who has been unjustly enriched at the expense of another is required to make restitution to that other. But, this rule would not be applicable in the contracts which are void from the beginning.

• Fact of the case :- In the given case, Kamala promised to marry Suresh if he helps Kamala in getting divorce from his husband who is a regular drinker of alcohol. Thus, Suresh appoints advocate for the same & pay fees to him. Afterward, court grants divorce to Kamala and her husband. But, when Suresh asked Kamala to marry him, he refused.

• Conclusion :- Here, about contract is immoral and void-ab-initio. Thus, Suresh can neither compel Kamala to marry him nor can get back the money spent by him on fighting the case.