

# N - RATHI CAREER FORUM

Marks: 60 Dt: 07.05.2024 Test: ICA + NI CA-Foundation Time: 2.00 Hrs

## Question 1.

- (a) Mr. Sanjay Kothari was a big businessman having two sons and one married daughter. He decided to gift his 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 an accident, and both died. Later, the daughter found document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under Indian Contract Act, 1872 (4M)

Solution:

**Provision:** Section 25 of the 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.

**Conclusion:** In the instant case, the transfer of house made by Mr. Sanjay Kothari 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.

- (b) What are the legal rules regarding consideration under the Indian Contract Act, 1872 (4M)

Solution:

- **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
- **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 stranger to the consideration but not the stranger to the contract
- **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
- **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.
- **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
- **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.
- **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.
- **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.

- (c) J, a shareholder of a company purchased for his personal use certain goods from a Departmental store on credit. He sent a cheque drawn on the company account to the Departmental store towards the full payment of the bills. The cheque was dishonoured by the company's bank. J, the shareholder of the company was neither the director nor the person in charge of the company. Examining the provision of the negotiable instrument act, 1881 state whether J has committed an offence u/s 138 of the Act and decide whether J can be held liable for the payment, for the goods purchased from the Departmental store. (4M)

Solution:

**Provision:** The facts of the problem are identical with the facts of a case known as H.N.D. Mulla Feroze Vs. C.Y. Somaya Julu, wherein the Andhra Pradesh High Court held that although the petitioner has a legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instruments Act, 1881.

Therefore, Jagdish also is not liable for the cheque but legally liable for the payments for the goods

## Question 2.

- (a) What are the exceptional cases where the agreement similar to the wagering agreements are not treated as void (4M)

Solution

### Transactions resembling with wagering transaction but are not void

- **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.
- **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.
- **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 ` 1,000.
- **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.

- (b) Mr. 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? (4M)

Solution:

**Provision:** As per Sec. 28 of Indian Contract Act, 1872 an agreement in restraint of legal proceeding is the one by which any party there to is restricted absolutely from enforcing his rights under a contract through a court or which abridges the usual period for starting legal proceeding. A contract of this nature is void.

So, problem asked in question is based upon Sec. 28 which is one of the essential of valid contract. Thus, any agreement in restraint of legal proceeding is void and one without legal effect.

**Conclusion:** Thus Mr. C cannot recover amounts of Rs. 10 lakh from Mr. X as it is illegal agreement hence void and cannot be enforced by law.

- (c) 'A' drew a cheque for Rs. 20,000 payable to 'B' and delivered it to him. 'B' endorsed the cheque in favor of 'R' but kept it in his table drawer. Subsequently B died and cheque was found by 'R' in B's table drawer. 'R' filed the suit for the recovery of cheque. Whether 'R' can recover the cheque under the provision of the Negotiable Instrument Act, 1881 (4M)

Solution

**Provision:** According to section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof. The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof

**Conclusion:** In the given case, cheque was indorsed properly but not delivered to indorsee i.e. 'R', Therefore, 'R' is not eligible to claim the payment of cheque

### Question 3.

(a) 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 (4M)

**Solution:**

**Position to dominate the will:** A person is deemed to be in such position in the following circumstances:

- **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 and etc.
- **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, creditor and debtor, etc.
- **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
- **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.

(b) State whether the following Bill of Exchange is valid or not? (4M)

- (i) "I order B to pay Rs. 500 to C when C delivers the goods to A"
- (ii) "I order Mr. Ravi to pay Rs. 5000 or 7000 to Mr. Ram"
- (iii) "I order Shyam to pay Rs. 500 to me or my order, if his son secures 60% marks in the Chartered Accountant course examination"
- (iv) W dismissed his servant R from services and towards his wages, he gave him a draft in the following words: "Mr. N will much oblige Mr. W by paying to Mr. R or order, rupees two hundred on his account. Signed by W".

**Solution:**

- (i) It is not a bill. A negotiable instrument can't be drawn on the basis of future event. In this case, it is uncertain as to date of payment. The other party may never deliver the goods.
- (ii) It is not a bill, since the amount is uncertain in the bill of exchange.
- (iii) It is not a bill, since the bill of exchange is conditional in nature.
- (iv) It is a bill of exchange, since introduction of word 'gratitude' does not destroy the order to pay.

(c) Distinguish between Wagering Agreement and Contract of Insurance (4 Points) (4M)

**Solution:**

	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	The crux of insurance contract is the mutual consideration (premium and

		money.	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	Loser 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.

#### Question 4.

- (a) X purchases a railway ticket for travelling from Akola to Nagpur. Terms and conditions were printed on the back of the railway ticket. One of the condition prescribed that the railway authority shall not be liable in case of loss, injury or delay to the passengers or their luggage. X did not see on the back of the ticket and there was no instruction on the face of the ticket to see the back for the terms and conditions. During the journey, X luggage is lost due to negligence of the staff on board. X claim the loss from the railway authority which denies its liability on the ground that the company has expressly excluded its liability at the time of formation of the contract. Comment whether the railway authority's stand is tenable in context of the provisions of the Indian Contract Act **(4M)**

Solution:

**Provision:** Where a passenger undertakes a travel, the conditions of travel are printed at the back of the tickets, sometimes these special conditions are brought to the notice of the passenger, sometimes not. In any event, the passenger is treated as having accepted the special condition the moment he bought his ticket

When someone travels from one place to another, it could be seen that special conditions are printed at the back of the ticket in small letters. The question here is whether these conditions can be considered to have been communicated to the passengers and can the passengers be treated as having accepted the conditions. The answer to the question is in the affirmative and was so held in *Mukul Datta vs. Indian Airlines* where the plaintiff had travelled from Delhi to Kolkata and the ticket bore conditions in fine print. But such terms and condition should be reasonable.

Conclusion: Thus, from the above facts and provisions it can be concluded that railway authority's stand is tenable and the railway authority is not liable for any loss caused to Mr. X.

- (b) Are there any circumstances under which a contract, under the provision of the Indian Contract Act, 1872 without consideration is valid? **(4M)**

**Solution:**

The general rule is that an agreement made without consideration is void. Sec 25 of the Indian Contract Act, 1872 provides for exceptions to this rule, where an agreement made without consideration is valid. These are:

- (i) **Agreement made on account of natural love and affection:** Section 25 (1) provides that if an agreement is (i) in writing (ii) registered under the law and (iii) made on account of natural love and affection (iv) between the parties standing in a near relation to each other, it will be enforceable at law even if there is no consideration.
- (ii) **Compensation for past voluntary services:** Section 25(2) provides that a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable.

- (iii) **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 binding even though there is no consideration.
- (iv) **Contract of agency (Section 185):** No consideration is necessary to create an agency
- (v) **Completed gift:** 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 promise undertakes the liability on the promise of the person to contribute to charity, there the contract should be valid

(c) A purchased a watch from B. He issued a promissory note to B which was payable on demand but no specific place for payment was mentioned on it. On maturity, B did not present the promissory note for payment. As the promissory note was not duly presented for payment, whether A would be discharged from liability under the provisions of the Negotiable Instruments Act, 1881? **(4M)**

**Solution:**

**Provision:** Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Provided that where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

**Conclusion:** On the basis of the above law provisions and facts of the case, although non-presentment of promissory note for payment results in discharge of maker from liability but the given case is covered under the exception to section 64. Hence, A would not be discharged from liability even if the non-presentment by B as the promissory note was payable on demand and no specific place for payment was mentioned.

### Question 5.

(a) Sachin bought 1000 Kg rice from Saurabh for Rs. 1,50,000 on three months credit. For this purpose, Sachin issued a promissory note to Saurabh on the same date payable after 3 months. On the date of maturity, the promissory note was dishonoured. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring to provisions of Negotiable Instruments Act, 1881, what amount could be recovered by Saurabh from Sachin **(5M)**

**Solution:**

**Provision:** According to section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- (i) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (ii) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (iii) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

**Conclusion:** On the basis of the above provisions of law and facts of the case, Saurabh has right to claim price of rice plus fees of advocate plus interest @ 18% p.a. from the date of payment until tender or realisation thereof.

(b) Mr. Ayush, the employer induced his employee Mr. Bobby to sell his one room flat to him at less than the market value to secure promotion. Mr. Bobby sold the flat to Mr. Ayush. Later on, Mr. Bobby changed his mind and decided to sue Mr. Ayush. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872. **(3M)**

Solution:

**Provision:** According to section 16 of the Indian Contract Act, 1872, a contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other. When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

**Conclusion:** Hence, the contract between Mr. Ayush and Mr. Bobby is voidable at the option of Mr. Bobby as it was induced by undue influence by Mr. Ayush and therefore Mr. Bobby can sue Mr. Ayush

(c) Mr. Parth applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Parth that he was appointed but official communication was not given by the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Parth filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Parth be successful in suit filed against school under the Indian Contract Act, 1872? (4M)

**Solution:**

**Provision:** As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or by his authorized agent. Communication of acceptance by third person cannot be concluded as valid acceptance.

**Facts:** In the instant case, Mr. Parth applied for a job as principal of a school and one member of the school management committee privately informed Mr. Parth that he was appointed. Later, the management of the school appointed someone else as a principal.

**Conclusion:** On the basis of the above provisions and facts, communication of appointment of Mr. Parth should be made by the school management committee or by any authorised agent. Communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Parth and the school and Mr. Parth cannot file a suit against the school for cancellation of his appointment

#### Question 6.

(a) Mr. Shekar wants to sell his car. For this purpose, he appoints Mr. Nadan, a minor as his agent. Mr. Shekar instructs Mr. Nadan that the car should not be sold at price less than Rs. 1,00,000. Mr. Nadan ignores the instruction of Mr. Shekar and sells the car to Mr. Masoom for Rs. 80,000. Explain the legal position of contract under the Indian Contract Act, 1872 whether (5M)

(i) Mr. Shekhar can recover the loss of Rs. 20,000 from Mr. Nadan

(ii) Mr. Shekhar can recover his car from Mr. Masoom

Solution:

**Provision:** According to the provisions of Section 11 of the Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio but minor can act as an agent. But he will not be liable to his principal for his acts.

In the instant case, Mr. Shekhar appoints Mr. Nadan, a minor as his agent to sale his car. Mr. Shekhar clearly instructed to Mr. Nadan that the minimum sale price of the car should be Rs. 1,00,000 yet Mr. Nadan sold the car to Mr. Masoom for Rs. 80,000.

(i) Considering the facts, although the contract between Mr. Shekhar and Mr. Nadan is valid, Mr. Nadan will not be liable to his principal for his acts. Hence, Mr. Shekhar cannot recover the loss of Rs. 20,000.

(ii) Further, Mr. Masoom purchased the car from agent of Mr. Shekhar, he got good title. Hence, Mr. Shekhar cannot recover his car from Mr. Masoom

(b) Explain the terms 'Trafficking relating to public offices' and 'Stifling prosecution' as per the Indian Contract Act, 1872 (7M)

Solution:

(i) **Trafficking relating to Public Offices and titles:** 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. The following are the examples of agreements that are void since they are tantamount to sale of public offices.

- (1) 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.
- (2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.

(ii) **Stifling Prosecution:** An agreement to stifle prosecution i.e. “an agreement to present proceedings already instituted from running their normal course using force” tends to be a perversion or an abuse of justice, therefore, such an agreement is void. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal. For example, when a party agrees to pay some consideration to the other party in exchange for the later promising to forgo criminal charges against the former is an agreement to stifle prosecution and therefore is void. Under the Code of Criminal Procedure, there is however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy

\*\*\*\*\***Best of Luck**\*\*\*\*\*