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CA Foundation Business Laws Sep 24
Important Topics

The Indian Contract Act, 1872

Unit 1: Nature of Contracts - Important Topics & Questions

1. Intention to create legal relationship
2. Void agreement Vs Illegal agreement (Impact on collateral agreement)
3. Offer and its legal rules
4. Offer vs Invitation to offer
5. Acceptance and its legal rules
6. Communication of offer and acceptance (Section 4 & 5)
7. Modes of revocation of offer (Section 6)
8. Acceptance by performing conditions (Section 8)

Q1.

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

Answer:

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

In the given question

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

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

Related Question:

Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited Rs. 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872.

Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha? (4 Marks) [June 23]

Answer:

As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts.

In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship.

If the said party organised by Radha had been a "Contributory 2023 New year celebration party", then Radha could have sued her three friends for the loss incurred in the said party as the agreement between her and her friends would have legal backing; on the basis of which Radha deposited the advance amount and the parties here intended to create legal relationship.

Q2

X agrees to pay Y Rs. 1,00,000/-, if Y kills Z. To pay Y, X borrows Rs. 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.

(i) Between X and Y.

(ii) Between X and W [Nov 22 - 4 Marks]

Answer

(a) Illegal Agreement: It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.

(b) In the present case,

(i) X agrees to give Rs. 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.

(ii) X borrows Rs. 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

Related Question:

X threatens to kill Y if he (Y) does not sell his house to X for Rs. 1, 00,000. Y agrees. X borrows Rs. 1, 00,000 from Z who is also aware of the purpose of the loan. What is the nature of the agreement between X and Y, and X and Z?

Answer

The contract between X and Y is a contract which is voidable at the option of Y because Y's consent is not free as it has been obtained by coercion. The contract between X and Z is a valid contract because the object of contract (i.e. borrowing for the purchase of a house) is lawful.

Q3

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

Answer:

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

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

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

I) Must be capable of creating legal relation.

II) Must be certain, definite and not vague.

III) Must be communicated.

IV) Must be made with a view to obtaining the assent of the other party

V) May be conditional

VI) Offer should not contain a term the non-compliance of which would amount to acceptance

VII) May be general or specific

VIII) May be expressed or implied

IX) A statement of price is not an offer

Q4

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

Answer:

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

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

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

Related Question:

Mr. Aseem is a learned advocate. His car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of Rs. 10,000 who will give the information about his car. Mr. Vikram reads the advertisement and on making some efforts got the stolen car and informed Mr. Aseem. Mr. Aseem found his car but denied giving reward of Rs. 10,000 to Mr. Vikram with the words, "An advertisement in newspaper is just an invitation to make offer and not an offer. Hence, he is not liable to make the reward." State with reasons whether under Indian Contract Act, 1872, Mr. Vikram can claim the reward of Rs. 10,000.

Answer:

An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation. But there is an exception to above provisions. When advertisement in newspaper is made for reward, it is the general offer to public.

On the basis of above provisions and facts, it can be said that as advertisement made by Mr. Aseem to find lost car is an offer, he is liable to pay Rs. 10,000 to Mr. Vikram.

Q5

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

Answer:

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

Legal rules regarding valid acceptance:

1. Acceptance can only be given by the person to whom the offer is made or who has the knowledge of the offer: In the case of a specific offer, it can be accepted only by the person to whom it is made. In the case of a general offer, it can be accepted by any person who has the knowledge of the offer.

2. Acceptance must be absolute and unqualified: The acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

3. The acceptance must be communicated: To conclude the contract between the parties, the acceptance must be communicated in a reasonable form. Any conditional acceptance is no

acceptance. If the proposal is accepted by the offeree, he must have the complete knowledge of the offer made to him.

4. Acceptance must be in a prescribed mode: Where the mode of acceptance is prescribed in a proposal, it must be accepted in that manner. But, if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise (not in the prescribed manner), the proposer is presumed to have consented to the acceptance.

5. Time: Acceptance must be given within a specified time limit, and if no time is fixed, then the acceptance shall be given within a reasonable time and before the offer lapses.

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

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

Related Question:

Mr. Pratham 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. Pratham that he was appointed but official communication was not given from the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Pratham filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Pratham be successful in suit filed against school under the Indian Contract Act, 1872? [RTP Nov 21]

Answer:

1. As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or his authorized agent. Communication of acceptance by third person cannot be concluded in valid acceptance.
2. In the instant case, Mr. Pratham applied for a job as principal of a school and one member of the school management committee privately informed Mr. Pratham that he was appointed. Later, the management of the school appointed someone else as a principal.
3. On the basis of above provisions and facts, communication of appointment of Mr. Pratham should be made by school management committee or any authorised agent. The communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Pratham and school and Mr. Pratham cannot file a suit against the school for cancellation of his appointment.

Q6

A young boy absconded from his father's house. The father offered a reward in a pamphlet stating that anybody who traces the missing boy and brings him home will be given Rs. 500. On Mr. Har Bhajan Lal, who knew about the reward, saw the body at Dharmsala Railway Station and took him to the police station. Har Bhajan Lal sent a telegram to the boy's father that he had found his son. Father after getting his son back refusing to give Rs. 500 to Mr. Har Bhajan Lal on the ground that

there was no communication of acceptance. Whether Mr. Har Bhajan Lal is entitled to receive the amount of reward following the provisions of Indian Contract Act, 1872? [Also asked in ACT test 1]

Answer:

General offer can be accepted by anyone by performing the conditions of offer

General offer:

1. It is an offer made to public at large and hence anyone can accept and do the **desired act** (Carlill Vs. Carbolic Smoke Ball Co.).
2. In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.
3. In this case, an offer through pamphlet was an offer to the whole world and could be accepted by anyone who fulfilled the conditions of the offer.

Here as Mr Har Bhajan Lal, by tracing the missing boy, had substantially performed the conditions of the offer therefore it was held that he was entitled to receive the amount of reward.

Q7

A, the secretary of a building society, handed over to B, in the office of the society, an offer to sell a property at Rs.750. Fourteen days' time was given to B for acceptance. B was residing in a different town, and took away with him the offer to that town. The next day, at about 3.30 p.m. B sent, by post, his letter of acceptance. This letter was received at society's office at 8.30 Pm. But before that at about 1.00 p.m. the society had posted a letter revoking its offer. B received the letter of revocation at 5.30 p.m. Advice B.

Answer:

Revocation of Proposals (Section 5 of The Indian Contract Act, 1872)
A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

Completion of communication of acceptance against proposer (Section 4 of The Indian Contract Act, 1872)
The communication of an acceptance is complete — as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor.

Thus, the offeror becomes bound by the acceptance as soon as the letter of acceptance is posted by the acceptor.

The revocation was held to be ineffetive [Henthorn v. Fraser]. In order that revocation to be effective, it shold have been reached B before he sent his acceptance i.e. before 3.30 p.m.

Q8

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

Answer:

Modes of revocation of Offer

(i) By notice of revocation

(ii) By lapse of time: The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.

(iii) By non-fulfillment of condition precedent: Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.

(iv) By death or insanity: Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

The Indian Contract Act, 1872

Unit 2: Consideration – Complete unit is Important

Some hot topics

1. Consideration need not be adequate
2. Consideration must be more than legal or contractual obligation
3. Exception of doctrine of privity of contract
   - Trust contract
   - Covenant running with the land
4. Agreement without consideration valid
   - Natural love & affection
   - Past voluntary services
   - Time barred debt
   - Charity

Q9

X, who was badly in need of money offered to sell his car worth Rs. 1,00,000 to Y for Rs. 10,000. Before the car was delivered, X received an offer of Rs. 20,000 and refused to carry out the contract on the ground of inadequacy of consideration. Is X liable to Y for damages?

Answer:

Consideration Need not be adequate:

(a) Adequacy of consideration should be decided from the view-point of the Promisor.

(b) Explanation to Sec.25 provides that an agreement to which consent of the party is freely given is not void merely because consideration is inadequate.

(c) However, inadequacy of consideration may be taken into account by Court to determine whether the Promisor's consent was freely given.

(d) Example: K promises to sell a house worth ₹ 8 Lakhs for ₹ 2 Lakhs only. The transaction is valid even if the consideration is inadequate. But, where a party pleads coercion, undue influence or fraud to avoid a transaction, inadequacy of consideration will also be taken as a piece of evidence.

Q10

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 Because a promise to do what a promisor is already bound to do adds nothing to the existing obligation.

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.

Example: X promises Y, his advocate, to pay an additional sum if the suit was successful. The suit was declared in favour of X but X refused to pay additional sum. It was held that Y could not recover additional sum because the promise to pay additional sum was void for want of consideration as Y was already bound to render his best services under the original agreement.

Q11

'Dunlop & Co.', a tyre company, sold certain tyres to D, a wholesaler, and secured an agreement from D not to sell the tyres to other trader below the Dunlop's list price. A further condition was also imposed that any retailer to whom D re-supplied the tyres should also promise D not to sell the tyres to the public below Dunlop's list price. D sold the tyres to 'Selfridge & Co' who agreed not to sell the tyres to the public below the Dunlop's list price. But 'Selfridge & Co.' sold the tyres below the Dunlop's list price. 'Dunlop & Co.' sued 'Selfridge & Co'. for damages for breach of the contract. Whether 'Dunlop & Co.' will succeed in filing suit following the provisions of Indian Contract Act, 1872? [Also asked in ACT test 1]

Answer:

Rule of Privity of Contract

1. The term 'privity of contract' means stranger to a contract. As per the doctrine of privity of contract, a person, who is not a party to the contract, cannot sue for carrying out the promise made by the parties to the contract.
2. In other words, a contract cannot be enforced by a person who is not a party to the contract.
3. In the instant case, agreement of 'Selfridge & Co' for not selling the tyres to the public below the Dunlop's list price is with D and not with 'Dunlop & Co.'
4. Therefore, 'Dunlop & Co.'s action to recover damages from Selfridge & Co. will fail as Dunlap & Co. was a stranger to contract between D and 'Selfridge & Co.'

Related Question:

A was appointed by his father as his successor. A was put in possession of the entire estate of his father. It was agreed between A and his father that he (A) would give certain sum of money and a village to B (an illegitimate son of A's father), on his attaining majority. A is refusing on attainment of majority of B. Advice B.

Answer:

Only those persons, who are parties to a Contract, can sue and be sued upon the contract. This Rule is called "Doctrine of Privity of Contract". A Third Party to a Contract cannot sue upon it, even though the Contract may be for his benefit.

One of the exception of such doctrine is “Trust”

The beneficiary (i.e. the person for whose benefit the trust has been created) may enforce the right under the trust, though he was not a party to the contract between the settler and the trustee.

Trust was created in favour of B for the specific amount and a village, therefore he was entitled to receover it from A.

Related Question:

Mrs. Radhika sold her ancestral house to Mr. Arjun on 1st January 2022 for Rs. 50 Lakhs. The sale deed included a provision stating that Mr. Arjun is entitled to use the entire property for residential purposes except for a small portion of the backyard, which should be left vacant for Mrs. Radhika's mother to maintain a small garden.

Tragically, Mrs. Radhika passed away in a car accident on 15th January 2022, leaving behind her husband and two minor children. On 20th January 2022, Mr. Arjun decided to demolish the entire house and construct a commercial building.

Subsequently, Mrs. Radhika's husband, Mr. Ramesh, intends to take legal action against Mr. Arjun to seek appropriate redress. Evaluate the situation with reference to the provisions of the Indian Contract Act, 1872, and advise Mr. Ramesh on the most suitable course of action.

Hint answer:

In the case of covenant running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

Q12

X, a Hindu husband executed a registered document in favour of Y, his wife, whereby he promised to pay her Rs. 1,000 per month. Later, X did not pay. Can Y recover from X (a) if this promise was made without any disagreement and quarrels between them? (b) if this promise was made after disagreement and quarrels between them?

Answer:

The agreement though made without consideration, will be valid and enforceable in the following situation

Natural Love and Affection: Conditions to be fulfilled under section 25(1)

(i) It must be made out of natural love and affection between the parties.
(ii) Parties must stand in near relationship to each other.
(iii) It must be in writing.
(iv) It must also be registered under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.

Case (a)
Therefore, Y could recover from X because the agreement was valid because it was made on account of natural love and affection between X and Y.

Case (b)
Therefore, Y could not recover from X because the agreement was void because it was not made an account of natural love and affection between X and Y.
[Leading case: Rajlakhi Devi v. Bhoot Nath Mookherjee]

Related Question:

Mr. Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872? [RTP Nov 21] [RTP Nov 22] [RTP June 23]

Answer:

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

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

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

Q13

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

Answer:

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

a) Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and enforceable even though there is no consideration.

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

In the instant case

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

Q14

Anita and Sonali are friends, Sonali treats Anita during Anita's illness.

Sonali does not accept payment from Anita for treatment and Anita promises Sonali's daughter Tania to pay her Rs. 75,000. Anita, being in poor circumstances is unable to pay.

Tania sues Anita for the money. Can Tania recover?

Offer your views based on provisions of the Indian Contracts Act, 1872.

Answer:

No, Tania cannot recover the money from Anita. The agreement between Tania and Anita is not a contract in the absence of consideration. In this case, Tania's mother Sonali, voluntarily treats Anita during her illness. Apparently it is not a valid consideration because it is voluntary whereas consideration to be valid must be given at the desire of the promisor-Section 2(d).

The question now is whether this case is covered by the exception given in Section 25(2) which provides.

"If it is a promise to compensate a person who has already voluntarily done something for the promisor"

Thus, as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor.
As Sonali's daughter, Tania to whom the promise was made, did nothing for Anita, so Anita's promise is not enforceable even under the exception.

The Indian Contract Act, 1872

Unit 3: Other Essential Elements of a Contract

1. Law relating to minor
    - No ratification after attaining majority
    - Minor cannot bind parent or guardian
2. Free consent – Also important for difference between (Section 15 to 22) (For both descriptive and practical questions)
3. Legality of object and consideration (Section 23) (For practical questions)
    - When consideration is opposed to public policy
        - Stifling Prosecution
        - Trafficking relating to Public Offices and titles
        - Agreements tending to create monopolies
        - Interference with the course of justice
    - Agreement in restraint of trade (Section 27)
    - Agreement in restraint of legal proceedings (Section 28)

Q15

Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting Rs. 60,000/- for purchasing a laptop, on 1st August 2021. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.

She will be adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

(i) By filing a case against Srishti, a minor for recovery of outstanding amount with interest?

(ii) By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?

By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity? [May 22 - 6 Marks] [RTP Dec 23]

Answer:

A contract made with or by a minor is void ab-initio: Pursuant to Section 11, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

(i) By following the above provision, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, a minor.

(ii) Minor cannot bind parent or guardian: In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessaries. The parents will be held liable only when the child is acting as an agent for parents.

In the instant case, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Srishti.

(iii) No ratification after attaining majority: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.

Hence, in this case also, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, after she attains majority.

Q16

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

Answer:

Coercion is –

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

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

(i) Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

(ii) As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.

(iii) A person to whom money has been paid or anything delivered under coercion must repay or return it.

Related Question:

An agent refused to hand over the account books of the business, at the end of his term of office, to the new agent unless the principal freed him from the liability in respect of his agency. The principal executed a release deed under which the agent was freed from liability. Advice principal.

Answer:

Coercion and its effects under section 15 and 19 of The Indian Contract Act, 1872

Provision same as above

Contract induced by coercion is voidable at the option of the party whose consent was so obtained.

Release deed was voidable at the option of the principal as he was made to execute the release deed under coercion. In this case, the consent was obtained by unlawfully detaining the property (i.e., account books) of the principal.

Q17

Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was Rs. 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of Rs. 5000 payable to doctor. Chandan signed the promissory note and gave it to doctor. On recovering from the disease, Chandan refused to honour the promissory note. State with reasons, can doctor recover the amount of promissory note under the provisions of the Indian Contract Act, 1872? [RTP May 22]

Answer:

Section 16 of Indian Contract Act, 1872 provides that 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 uses that position to obtain an unfair advantage over the other.

Further, a person is deemed to be in a position to dominate the will of another—
(a) Where he holds a real or apparent authority over the other, or
(b) Where he stands in a fiduciary relation to the other; or
(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Section 19A provides that when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

From the facts of the case, Chandan signed the promissory note under undue influence applied by doctor. Hence, Dr. Jhunjhunwala cannot recover the amount of promissory note but can claim his normal consultation fee from Chandan.

Related Question:

Mr. A, the employer induced his employee Mr. B to sell his one room flat to him at less than the market value to secure promotion. Mr. B sold the flat to Mr. A. Later on, Mr. B changed his mind and decided to sue Mr. A. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872. (2 Marks – June 23)

Answer:

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.

Hence, the contract between Mr. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A.

Q18

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

(a) If P says nothing about the unsoundness of the horse to Q.

(b) If P says nothing about it to Q who is P's daughter who has just come of age.

(c) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing.

Answer:

DOES SILENCE AMOUNT TO FRAUD?

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

(a) This contract is valid since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.

(b) This contract is not valid since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence is equivalent to speech and hence amounts to fraud.

(c) This contract is not valid since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.

Related Question:

Karan agreed to purchase wooden table for his study room from Mr. X. Table was in good condition and was examined by Karan before purchasing. He found no defects in it and paid Rs. 20,000 for that table. Later on, it was found that one leg of table is broken, and Mr. X has pasted the wood and tried to hide the defects in the table. Can Karan return the table and claim the amount back? Discuss the same with reference to Indian Contract Act, 1872. [RTP Nov 22]

Answer:

As per Section 17 of Indian Contract Act, 1872, "A false representation of material facts when made intentionally to deceive the other party to induce him to enter into a contract is termed as a fraud." Section 17(2) further states about active concealment. When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed.

In case a fraud is committed, the aggrieved party gets the right to rescind the contract. (Section 19). In the present case, Karan has examined the study table before purchasing it from Mr. X and could not find any defect in the table as it was concealed by Mr. X.

On the basis of above provisions and facts of the case, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.

Related Question:

Kapil went to a departmental store to purchase a steel pan. He asked the salesman about the area in departmental store where steel pans are kept. The salesman indicated him the area with instructions that with steel pans, other metal's pans were also kept. Kapil wrongfully picked an aluminium pan in place of steel pan. The salesman watched but said nothing to Kapil. Kapil reached his house and found that pan was not a steel pan but actually an aluminium pan. Kapil filed a suit against departmental store for fraud. Discuss, whether Kapil was eligible to file suit for fraud against departmental store under Indian Contract Act, 1872? [RTP May 22 - 6 Marks]

Answer:

It was also explained that mere silence is not fraud. Silence amounts to fraud where (a) there is a duty to speak or (b) where silence is equivalent to speech.

On the basis of provisions of Section 17 and the facts given above, it was not the duty of salesman to inform Mr. Kapil about his mistake. Hence, there was no fraud and Kapil was not eligible to file suit for fraud against departmental store under Indian Contract Act, 1872.

Q19

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

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

Answer:

Misrepresentation means and INCLUDES –

Positive Assertion	• of such fact, which is not true, though he believes it to be true, • made in a manner not warranted by the information of the person making it.
Any Breach of Duty	• made without an intent to deceive, • but bringing gains and advantage to the person committing it, or to any one claiming under him, • by misleading another to his prejudice, or to the prejudice of anyone claiming under him.
Causing the other party to make mistake	• as to the substance of the subject matter of the agreement.

In simple words misrepresentation means:

1. Positive false statement made without any basis for info

2. a beach of duty which brings advantage to person committing it

3. inducement of mistake about subject matter

In the instant case

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

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

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

Answer:

1. As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.
2. A party to contract, whose consent was caused by fraud or misrepresentation, may, if he think fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.
3. Exception- If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

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

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

Answer:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the	The person making the statement

	suggestion believes that the statement as untrue.	believes it to be true, although it is not true.
Recession of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

Q20

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 Judical officer stating that the amount of Rs. 10 lakhs would be paid to him if he does not take up brief of Mr. Y.

Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C. Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872? [Dec 20 4 Marks] [RTP Dec 23]

Answer:

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

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

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

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

Accordingly,

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

The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal proceedings. This

agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872.

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

Q20

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

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

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

Answer:

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

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

In the instant case

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

Q21

Rohan is running a grocery store in Delhi. He sells his grocery business, including goodwill worth Rs. 1,00,000 to Rohit for a sum of Rs. 5,00,000. After the sale of goodwill, Rohit made an agreement with Rohan. As per this agreement, Rohan is not to open another grocery store (similar kind of business) in the whole of India for next ten years. However, Rohan opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Rohan with reference to Indian Contract Act, 1872? [MTP Oct 21 - 6 Marks] [RTP June 23]

Answer:

Section 27 of the Indian Contract Act, 1872 provides that any agreement that restrains a person from carrying on a lawful trade, profession or business is void agreement. However, there are

certain exceptions to this rule. One of the statutory exceptions includes sale of Goodwill. The restraint as to sale of goodwill would be a valid restraint provided-

(i) Where the restraint is to refrain from carrying on a similar business.

(ii) The restrain should be within the specified local limits.

(iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price.

(iv) The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court.

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

Related Question: X and Y were two organizations trading in wheat of 'Popular Brand' in Uttar Pradesh. X realizes that the wheat business is high yielding. To expand his business X offered Y a sum of ₹ 10 Lakhs on the condition that Y shall not sell Popular Brand' wheat in Uttar Pradesh. X failed in making the promised payment to Y. Y filed a suit against

X for non-fulfillment of the promise. Is the suit maintainable? [4 Marks]

Answer:

An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. [Section 27]

Exceptions, i.e., where Restraint of Trade is valid:

The following are valid agreements, even if they are in restraint of trade - (These are explained in detail below)

(a) Agreement with Buyer of Goodwill - as per explanation to Sec.27.

(b) Trade Combinations, to the extent they do not create monopoly or opposed to public policy.

(c) Service Agreements with employees.

(d) Agreements under the Partnership Act, 1932. Conclusion

In the light of the above provision & facts of the case we conclude that a Combination which create monopoly, or when two Firms enter into an Agreement to avoid competition, they are against public policy and hence void.

Therefore, the suit is not maintainable.

Expected case study: A, a businessman sold the goodwill of his trade to B. Both of them agreed that A will not practice the same trade for 3 years, and also that A will not carry on any business competing in any way with the business of B. Here, the agreement being divisible, the first part was held to be valid as necessary to protect the interest of the purchaser of goodwill The second part was held to be void as it prevented A from carrying on any business.

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

Answer:

Agreement in Restraint of Trade

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

In the instant case

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

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

Q22

A clause in a life insurance policy was that "no suit to recover under the policy shall be brought after one year from the date of death of assured." X died and his legal representatives filed a suit to recover the assured sum after two and half years. Is this suit maintainable? [2 Marks]

Answer:

Agreement in restraint of legal proceedings (Section 28):

An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court or which abridges the usual period for starting legal proceedings. A contract of this nature is void.

In the instant case the suit is not maintainable because the clause in policy is void because it curtailed the prescribed period of limitation (which is 3 years) according to Law of Limitation Act.

The Indian Contract Act, 1872

Unit 4: Performance of Contract

1. Contract based on personal skill and confidence (Section 37 & 40)
2. Effect of refusal of party to perform promise wholly & Effect of accepting performance from third person (Section 39 & 41)
3. Joint promisor (Section 42-44)
4. Appropriation of payments (Section 59-61)
5. Contracts which need not be performed Section 62-63)
6. Obligation of person who has received advantage under void agreement, or contract that becomes void (Section 56 & 65)
7. Grounds of discharge of contract

Q23

Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. C an artist and asked whether he could sketch the former's portrait on oil painting canvass. Mr. C agreed to the offer and asked for Rs. 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

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

Discuss in light of the Indian Contract Act, 1872?

(i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?

(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

Answer:

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

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

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

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

Related Question: Mr. Singhania entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhania promised to pay Rs. 20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. Mr. Singhania terminated the contract. State in the light of provisions of the Indian Contract Act, 1872: -

(a) Can Mr. Singhania terminate the contract with Mr. Sonu?

(b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhania allows him to perform without saying anything?

(c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhania allows him to perform without saying anything? [RTP May 22]

Answer:

According to Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Therefore, in the instant case,

(a) As Mr. Sonu could not perform as per the contract, Mr. Singhania can repudiate the contract.

(b) In the second situation, as Mr. Singhania allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhania had given his assent to continue the contract. Mr. Singhania cannot terminate the contract however he can claim damages from Mr. Sonu.

(c) In case Mr. Singhania allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhania had given his assent for performance by third party. Now Mr. Singhania cannot terminate the contract nor can claim any damages from Mr. Sonu.

Q24

X, Y and Z jointly borrowed Rs. 60,000 from L. Decide in the light of The Indian Contract Act, 1872:

(i) Whether L can compel only Y to pay the entire loan of Rs. 60,000.

(ii) If X, Y and Z died, whether L can compel only the Legal representatives of X to pay the loan of Rs. 60,000.

(iii) If the whole amount was repaid to L by Y. How much Y can recover from Xand Z?

(iv) If the whole amount was repaid to L by Y and Z became insolvent and his private assets are sufficient to pay only 1/5 of his share of debts. How much Y can recover from X and Z?

(v) If the whole amount was repaid to L by Y, Z became insolvent and his private assets are sufficient to pay only 1/5 of his share of debts and X died and his sonW inherited the assets of Rs. 17000. How much Y can recover from X and Z?

(vi) If L releases X from his liability and sues Y and Z for payment, whether Y and Z are also

released from their liability to L and X is released from his liability to Y and Z for contribution.

[6 Marks]

Answer:

Section to which the given problem relates: Section 42 to 45 Decision:

(i) Yes. L can compel only Y to pay Rs. 60,000 since as per Sec. 43 in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

(ii) No. L can compel the Legal representatives of X, Y and Z jointly to pay the loan of Rs. 60,000, since as per Sec. 45 unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly, with the survivor or survivors and after the death of the last survivor, with the representatives of all jointly.

(iii) Y can recover the contribution of Rs. 20,000 each from X and Z since as per Sec. 43 in the absence of express agreement to the contrary, the promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract).

(iv) Y can recover the contribution of Rs. 28,000 (i.e. Rs.60,000 × 1/3) + (16,000 × 1/2) from X and Rs. 4,000 (i.e. Rs. 60,000 x 1/3 × 1/5) from Z since as per Sec. 43 in the absence of express agreement to the contrary, 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.

(v) Y can recover the contribution of Rs. 17,000 from X and Rs. 4,300 [i.e. (Rs.60,000 × 1/3) + (3,000 × 1/2)] x 1/5 from Z since as per Sec. 43 in the absence of express agreement to the contrary, 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.

Note: A legal representative is liable only to the extent of property of the deceased received by him as per Sec. 42.

(vii) If L releases X from his liability and sues Y and Z for payment neither Y and Z are released from their liability to L nor X is released from his liability to Y and Z for contribution since as per Sec. 44 a release of one of such joint promisors by the promisee, does not discharge the other joint promisors neither does it free the joint promisor so released from responsibility to the other joint promisors.

Q25

Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31St March, 2020. (i) Rs. 12,120 which was due in May 2016. (ii) Rs. 5,650 which was due in August 2018 (iii) Rs. 9,680 which was due in May 2019. Mr. Murari made payment on 1St April 2020 as below without any notice of how to appropriate them:

(i) A cheque of Rs. 9,680

(ii) A cheque of Rs. 15000

Advice under the provisions of the Indian Contract Act, 1872. [MTP Nov 21 – 6 Marks] [Module Back Question] [RTP June 23]

Answer:

If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59,60 and 61. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either the law will allow appropriation of debts in order of time.

In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence cheque of Rs. 9,680 will be appropriated against the bill of Rs 9,680 which was due in May 2019.

Cheque of Rs. 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

Hence, Mr. Girdhari can appropriate the same against the debt of Rs. 12,120 which was due in 2016 and balance against Rs. 5650 which was due in August 2018.

Q26

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

Answer:

1. Discharge by Mutual Agreement

(a) Novation:

(a) Novation means substitution of a new Contract in the place of the original contract.

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

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

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

(b) Rescission:

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

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

(c) Alteration:

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

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

2. Promisee may waive or remit performance of promise (Section 63): "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for Such performance or may accept instead of it any satisfaction which he thinks fit". In other words, a contract may be discharged by remission.

3. Restoration of Benefit under a Voidable Contract (Section 64): The law on the subject is "When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received".

4. Obligations of Person who has Received Advantage under Void Agreement or contract that becomes void (Section 65): When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

5. Effects of neglect of promisee to afford promisor reasonable facilities for performance (Section 67): If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Q27

Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which. Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of Rs. 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of Rs. 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of Rs. 50.000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. [Nov 18, 4 Marks] [MTP March 19, 6 Marks] CS LLM Arjun Chhabra (Law Maven) Mo: 6262621438

Answer:

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

for it to the person from whom he received it.

In the given question

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

Related Question: Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5, 00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement, Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three-month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH.

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

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

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

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

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

Q28

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

Answer:

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

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

but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

(2) Discharge by mutual agreement: Section 62 of the Indian Contract Act, 1872 provides that if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.

(3) Discharge by impossibility of performance: The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to (a) unforeseen change in law (b) The destruction of subject matter (c) The non-existence or non-occurrence of particular state of things (d) the declaration of war (Section 56).

(4) Discharge by lapse of time: A contract should be performed within a specific period as prescribed in the Law of Limitation Act., 1963. If it is not performed the party is deprived of remedy at law.

(5) Discharge by operation of law: It may occur by death of the promisor, by insolvency etc.

(6) Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract (Section 64).

(7) A promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction he thinks fit. In other words, a contract may be discharged by remission. (Section 63).

(8) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

The Indian Contract Act, 1872

Unit 5: Breach of Contract and its Remedies

1. Anticipatory breach and its effects
2. Compensation for loss or damage caused by breach of contract (Section 73)
3. Liquidated damage vs penalty

Q29

"An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived." Discuss stating also the effect of anticipatory breach on contracts. [MTP March 19, 7 Marks] [Module Back Question] [MTP Oct 19, 7 Marks] [RTP Nov 18] [MTP Oct 20-7 Marks] [MTP Oct 21 – 7 Marks] [RTP May 22] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

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

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

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

(1) To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or

(2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non- performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

Q30

A who is a builder, agrees to erect and finish a house by 1st Jan so that B may give possession of the house at that time to C to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that it falls down before 1 January and has to be rebuilt by B. As a consequence, B loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. B being aggrieved by the act of A wants to claim compensation from A. Advise B whether he can claim compensation from A, if yes? What amount of compensation B can claim from A as per the provisions of Indian Contract Act, 1872? **(4 Marks)**

[ACT Test Question]

Answer:

Compensation for loss or damage

1. 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 i.e. damages arising directly from breach (also known as ordinary damages)

      or
    - which the parties knew to be the likely result of such breach i.e. damages other than those arising directly from breach (also known as special damages)
2. In simple words, Damages other than those arising directly from breach may be recovered if such damages were in contemplation (known) of both parties at the time of making of Contract. They are known as 'Special Damages'.
3. When there are certain special or extraordinary circumstances present and their existence is communicated to the Promisor, non-performance of promise entitles the promisee to claim Ordinary Damages and also Special Damages.
4. As per explanation given above, A must make compensation to B for:
    - the cost of rebuilding the house, (Ordinary damages)
    - the rent lost, and (Special damage)
    - the compensation made to C. (Special damage)

since A was informed about the contract between B and C i.e. special circumstances was know to A at the time of making of Contract.

Related Question:

'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ Rs. 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 @ Rs. 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 Rs. 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872. [MTP Oct 2018, 6 Marks - Based on Bottles] [MTP March 18, 6 Marks- Based on Bottles] [MTP April 19] [MTP April 19, 6 marks] [RTP Nov 20] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8

Answer:

In the instant case

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

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

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

Q31

"Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain the statement by differentiating between liquidated damages and penalty with reference to provisions of the Indian Contract Act, 1872. [Module Back question] [RTP May 21] [May 22 – 6 Marks]

Answer:

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

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

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

Explanation to Section 74

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

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

Sri Chunni Lal vs. Mehta & Sons Ltd (Supreme Court)

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

Difference between 'Liquidated Damages' and 'Penalty'

Basis	Liquidated Damages	Penalty
1. Meaning	It represents a sum fixed or ascertained by the parties to the Contract, being a fair and genuine estimate of the probable loss that may arise due to breach.	It is the sum mentioned in the contract at the time of its making, being disproportionate to, i.e. very high than the loss that might arise as a result of breach. It is usually a very high sum, to ensure performance of the contract.
2. Intention	The intention for liquidated damages is the recovery of damages that might arise due to breach.	The intention for penalty is to ensure performance of a Contract. Performance is better than paying penalty. It acts as a deterrent to avoid performance.
3. Basis for Classi-fication	An amount becomes Liquidated Damages, if it is found that the parties to Contract conscientiously tried to make a pre-estimate of loss which might happen to them if there is a Breach of contract.	An amount becomes penalty, if parties made no attempt to estimate the loss, but with the sole object of coercing the offending party to perform the Contract, which is not in proportion to the loss.
4. Example	A contracts with B to deliver possession of a house under construction within a period of 6 months, failing which he would pay the monthly rental of B. The monthly rental payable by B for A partakes the character of liquidated damages.	P contracts to deliver 50 Units of a Petrol Engine to Q on a stipulated day, failing which he shall pay ₹ 5 Lakhs. Neither the price of Engine nor loss on failure of delivery would amount to ₹ 5 Lakh. Hence it is a penalty.

The Indian Contract Act, 1872

Unit 6: Contingent and Quasi Contracts - Complete unit is Important

Some hot topics

1. Definition of contingent contract & enforcement of it on an event happening (Section 31 & 32)
2. Contingent Vs wagering
3. Claim for necessaries supplied to persons incapable of contracting (Section 68)

Q32

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

Answer:

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

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

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

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

Example: Contracts of Insurance, indemnity and guarantee.

Essentials of a contingent contract

(a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.
Example: 'A' promises to pay ` 50,000 to 'B' if it rains on first of the next month.

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

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

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

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

(d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.
Example: 'A' agreed to sell his agricultural land to 'B' after obtaining the necessary permission from the collector. As a matter of course, the permission was generally granted on the fulfillment of certain formalities. It was held that the contract was not a contingent contract as the grant of permission by the collector was almost a certainty.

Related Question: Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts. [MTP Oct 20 – 5 Marks] [July 21 – 7 Marks] [RTP May 22 – 7 Marks]

Answer:

Meaning: Same as above

Rules as to Enforcement of Contingent Contracts:

Contingent upon

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

These rules are explained below

Contingency	Enforcement	Example
Happening of an Uncertain Future Event [Sec.32]	• Cannot be enforced by law unless and until such an event has happened. • Where the event becomes impossible, such contracts become void.	• A makes a contract with B to buy B's horse if A survives C. This cannot be enforced by law unless and until C dies in A's life-time. • A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse had been earlier offered, refuses to buy. Contract cannot be enforced by law, unless & until C refuses to buy the horse. • A contracts to pay B a sum of money when B marries C. C dies without being married to B. Contract becomes void.
Non-Happening of an Uncertain Future Event [Sec.33]	Can be enforced when the happening of that event becomes impossible, and not before.	A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. Contract can be enforced when the ship sinks.
Happening of a Specified Uncertain Event within a fixed time [Sec.35]	Becomes void if - • at the expiry of time fixed, such event has not happened, or • before the time fixed, such event becomes impossible.	A promises to pay B a sum of money if a certain ship returns within a year. The Contract may be enforced if the ship returns within the year, and becomes void, if the ship is burnt within the year.

Non-happening of a Specified Uncertain Event within a fixed time [Sec.35]	Can be enforced by law - • when time fixed has expired and such event has not happened, or • before expiry of the time fixed, it becomes certain that such event will not happen.	A promises to pay B a sum of money if a certain ship does not return within a year. The Contract may be enforced if the ship does not return within the year, or is burnt within the year.
Behaviour of a person at an unspecified time of future [Sec.34]	Event shall be considered to become impossible when such person does anything, which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.	A agrees to pay B a sum of money if B marries C. But C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.
Impossible Event [Sec.36]	Void, irrespective of whether or not the parties know of the impossibility of the event, at the time of entering into the agreement.	• A agrees to pay B ₹ 1,000 if two parallel straight lines should enclose a space. Agreement is void. • A agrees to pay B ₹ 1,000 if B will marry A's daughter C and C was dead at the time of the agreement. Agreement is void.

Related Question: PQR, a hospital in Delhi, recruits Dr. A, on contract basis for a period of 3 months. The hospital management promises to pay Dr. A, a lumpsum amount of Rs. 1,00,000 if Dr. A test positive for noval corona virus (Covid 19) during the contract period of 3 months.
Identify the type of contract and highlight the rule of enforcement. Also, what will happen if Dr. A does not contract Covid 19. [RTP Nov 21]

Answer:

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

Q33

Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M, their

neighbour, out of pity, started supplying food and other necessaries to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessaries to Mr. Y for four years, Mr. M approached the former asking him to payback Rs.15 Lakhs inclusive of Rs. 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of Rs. 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

(i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?

(ii) What is the maximum amount- of money that can be recovered by Mr. M?

Shall the provisions of the above act also apply to the medical treatment given to the grandmother? [Nov 22 - 6 Marks]

Answer:

(i) Claim for necessaries supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872): If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

In the instant case, Mr. M supplied the food and other necessaries to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

(ii) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is Rs. 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to Rs. 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

(iii) Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.

The Indian Contract Act, 1872

Unit 7: Contract of Indemnity and Guarantee - Complete unit is Important

Some hot topics

1. Contract of Indemnity Vs Guarantee (Section 124 & Section 126)
2. Contract of guarantee and its essentials (From module)
3. Consideration for guarantee (Section 127)
4. Circumstances of discharge of surety

Q34

Distinguish between a contract of Indemnity and a contract of Guarantee as per The Indian Contract Act, 1872.

Answer

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/ Parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee].	There are three parties creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non performance of an existing promise or non-payment of an existing debt.
Time to act	The indemnifier need not act at the request of indemnity holder	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent to contract	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

Q35

Manish, a minor, lost his parents in COVID-19 pandemic. Due to poor financial background Manish was facing difficulties in maintaining his livelihood. He approached Mr. Sohel (a grocery shopkeeper) to supply him grocery items and to wait for some period for receiving his dues. Mr. Sohel did not agree with the proposal; but when Mr. Ganesh, a local person, who is a major, agreed to provide guarantee that he would pay the dues in case Manish fails to pay the amount, Mr. Sohel supplied the required groceries to Manish. After few months when Manish failed to clear his dues, Mr. Sohel approached Mr. Ganesh and asked him to clear the dues of Manish. Mr. Ganesh refused to pay the

amount on two grounds; firstly, that there was no consideration in the contract of guarantee and secondly that Manish is a minor and therefore on both the grounds the contract of guarantee is not valid.

Referring to the relevant provisions of the Indian Contract Act, 1872, decide, whether the contention of Mr. Ganesh, (the surety) is tenable? Will your answer differ in case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors?

Answer

(i) Whether the contention of Mr. Ganesh (the Surety) is Tenable?

In the light of the given facts in the question, the guarantee was given by Mr. Ganesh (the surety) to Mr. Sohel that he would pay the dues in case Mr. Manish (the Principal Debtor) fails to pay the amount. However, later on it was contended by Mr. Ganesh that there was no consideration in the contract of guarantee and also that Manish is a minor and therefore the contract of guarantee is not valid.

As per the provisions of **Section 127** of the Indian Contract Act, 1872, anything done, or promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

In the given case, Mr. Ganesh has provided guarantee to Mr. Sohel for the benefit of Mr. Manish which will be treated as sufficient consideration even though there is absence of direct consideration. In other words, a guarantee without consideration is void, but there is no need for a direct consideration between the surety and the creditor.

Regarding the contention that Manish is a minor and therefore, the contract of guarantee will be invalid is not tenable due to the fact that Mr. Ganesh (surety) and Mr. Sohel (the creditor) are not minors. In other words, the capability of the principal debtor (being a minor) does not affect the validity of the agreement of the guarantee.

In view of the above, it can be concluded that the contention of Mr. Ganesh is not tenable.

(ii) In case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors:

The answer will differ in case both Manish (the principal debtor) and Mr. Ganesh (the surety) are minors. In such a situation, the agreement will be treated as void from inception as the minors cannot give guarantee even with a claim for necessities.

Discharge of surety by variance in terms of contract

Q36

Y advances Z a loan of R 10,000 on the guarantee of X, at an interest of 10%. Subsequently, as Z was having some financial problems, Y reduced the rate of interest to 7% and also extended time for repayment of loan without the consent of X. Z becomes insolvent. Can Y sue X for recovery of amount?

Answer

According to **section 133** of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Accordingly, Y cannot sue X, because a surety (X) is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor (Z) no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety.

Related Question:

Mr. X agreed to give a loan to Mr. Y on the security of four properties. Mr. A gave guarantee against the loan. Actually Mr. X gave a loan of smaller amount on the security of three properties. Whether Mr. A is liable as surety in case Mr. Y failed to repay the loan?

Answer

As per the provisions of **section 133** of the Indian Contract Act, 1872, any variance, made without the surety's consent, in the terms of the contract between the principal [debtor] and the creditor, discharges the surety as to transactions subsequent to the variance. In the given instance, the actual transaction was not in terms of the guarantee given by Mr. A. The loan amount as well as the securities were reduced without the knowledge of the surety So, accordingly, Mr. A is not liable as a surety in case Y failed to repay the loan.

Related Question:

Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years contract at a monthly salary of Rs. 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay Rs. 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of Rs.30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's Appointment?

Answer

As per the provisions of **Section 133** of the Indian Contract Act, 1872, if the creditor makes any variance (i.e., change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change.

In the instant case, Mr. Pawan is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chetan during the first six months but not for misappropriations committed after the reduction in salary.

Hence, Mr. Pawan, will be liable as a surety for the act of Mr. Chetan before the change in the terms of the contract i.e., during the first six months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities towards the act of the Mr. Chetan after such variation.

Related Question:

'A' gives to 'M' a continuing guarantee to the extent of Rs. 8,000 for the fruits to be supplied by 'M' to 'S' from time to time on credit. Afterwards 'S' became embarrassed and without the knowledge of 'A', 'M' and 'S' contract that 'M' shall continue to supply 'S' with fruits for ready money and that payments shall be applied to the then existing debts between 'S' and 'M'. Examining the provision of the Indian Contract Act, 1872, decide whether 'A' is liable on his guarantee given to M.

Answer

Discharge of surety by variance in terms of contract:

The problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in **Section 133.** The section provides that any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance

In the given problem, 'M' and 'S' entered into arrangement by entering into a new contract without knowledge of the Surety 'A'. Since, the variance made in the contract is without the surety's consent in the existing contract, as per the provision, 'A' is not liable on his guarantee for the fruits supplied after this new arrangement. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there now and he is not liable on the altered contract because it is different from the contract made by him.

Related Question:

Mr. Shashank, is employed as a cashier on a monthly salary of ` 10,000 by XYZ bank for a period of three years. Yash gave surety for Shashank's good conduct. After nine months, the financial position of the bank deteriorates. Then Shashank agrees to accept a lower salary of `5,000/- per month from Bank. Two months later, it was found that Shashank has misappropriated cash since the time of his appointment. What is the liability of Yash? Decide your answer in reference to the provisions of the Contract Act, 1872.

Answer

According to **section 133** of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Thus, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Yash is liable as a surety for the loss suffered by the bank due to misappropriation of cash by Shashank during the first nine months but not for misappropriations committed after the reduction in salary.

Related Question:

Mr. Ram was employed as financer in "Swaraj Ltd" on the surety of his good conduct, given by Mr. Janak, a good friend of the director of the company. Mr. Ram was kept on the salary of Rs. 45,000 per month. After 3 years, the company went into losses and so company decided for the cost cutting by retrenching of many employees and reducing the salaries of the employees. Mr. Ram was also proposed either to quit the job or continued with the lower salary of Rs. 35,000 per month . He accepted and continued with the job . After few months, it was reported by accounts department of the company that Mr. Ram manipulated with the funds of the company.

As per the provisions of the Indian Contract Act, 1872, analyse the legal positions of Mr. Janak, in the given situations:

(i) Mr. Ram has manipulated the funds of the company since the time of his appointment.
(ii) Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary.

Answer

Section 133 of the Indian Contract Act, 1872 deals with the provision related to the discharge of the surety. Provisions states that where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Following is the answer in the light of the above provision:

(i) In case where, Mr. Ram has manipulated the funds of the company since the time of his appointment. In this case Mr. Janak is liable as a surety for the loss suffered by the Swaraj Company due to manipulation of the funds by Mr. Ram during the three years of his service.

In case where, Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary. In this case, variance in the terms of the contract (i.e., to work on lower salary) was made without surety's consent. For all the transactions taking place subsequent to such variance, shall discharge the surety for the loss suffered by the Swaraj company.

Discharge of surety by act of creditor

Related Question:

Explaining the provisions of the Indian Contract Act, 1872, answer the following:
A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?

Answer

According to **Section 134** of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

Related Question:

Mr. Sanjeev is dealing in high quality timber. Mr. Amit wants to purchase the timber from him on credit which is to be used in renovation of his house. Mr. Pramod gives a guarantee to Mr. Sanjeev for timber to be supplied by Mr. Sanjeev to Mr. Amit. Mr. Sanjeev supplied the required timber to Mr. Amit. Afterwards, Mr. Amit embarrassed and contracts with his creditors (including Mr. Sanjeev) to assign to them his property in consideration of their releasing him from their demands. On due date, Mr. Sanjeev filed the suit against Mr. Pramod for recovery of the payment of timber due to Mr. Amit. Explain, with reference to Indian Contract Act 1872, whether Mr. Sanjeev can claim the payment from Mr. Pramod?

Answer

Section 134 of the Indian Contract Act 1872 provides that the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In other words, if principal debtor is discharged surety will also be discharged.

On the basis of provisions and facts of the case, it is clear that on assigning his property to creditors, Mr. Amit is released from his liability against his creditors including Mr. Sanjeev. Now, by following the provisions of section 134, as Mr. Amit (principal debtor) is released, Mr. Pramod (surety) will be discharged. Hence, Mr. Sanjeev cannot claim the payment from Mr. Pramod.

Related Question:

Explaining the provisions of the Indian Contract Act, 1872, answer the following:

C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

Answer

According to **Section 136** of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged.

In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

The Indian Contract Act, 1872

Unit 8: Bailment and Pledge

1. Define bailment and state its essential elements
2. Duties of bailor & bailee (From Module)
3. Termination of bailment (From Module)
4. Finder of lost goods (Section 168 & 169) (Strong possibility) (From module)
5. General lien vs Particular lien (From module)

Q37

State the essential elements of a contract of bailment. **(6 Marks)**

Answer:

Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The essential elements of the contract of the bailment are:

(i) Delivery of goods-The essence of bailment is delivery of goods by one person to another.

(ii) Bailment is a contract—In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.

(iii) Return of goods in specific-The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.

(iv) Ownership of goods—in a bailment, it is only the possession of goods which is transferred, and the bailor continues to be the owner of the goods.

(v) Property must be movable-Bailment is only for movable goods and never for immovable goods or money.

The Sale of Goods Act, 1930

Unit 1: Formation of the Contract of Sale

1. Sale and agreement to sell (Section 4)
2. Definition of goods and its types (Section 2 (7) & (6) and Section 6
3. Goods perishing before sale but after agreement to sell (Section 8)
4. Section 9 & 10
5. Hire purchase
6. Constructive delivery

Q38

Archika went to a jewellery shop and asked the shopkeeper to show the gold bangles with white polish. The shopkeeper informed that he has gold bangles with lots of designs but not in white polish rather if Archika select gold bangles in his shop, he will arrange white polish on those gold bangles without any extra cost. Archika select a set of designer bangles and pay for that. The shopkeeper requested Archika to come after two days for delivery of those bangles so that white polish can be done on those bangles. When Archika comes after two days to take delivery of bangles, she noticed that due to white polishing, the design of bangles has been disturbed. Now, she wants to avoid the contract and asked the shopkeeper to give her money back but shopkeeper has denied for the same.

(a) State with reasons whether Archika can recover the amount under the Sale of Goods Act, 1930.
(b) What would be your answer if shopkeeper says that he can repair those bangles but he will charge extra cost for same? [RTP Nov 21]

Answer:

As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale , the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

(a) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Archika and shopkeeper and not a sale. Even the payment was made by Archika, the property in goods can be transferred only after the fulfilment of conditions fixed between buyer and seller. As the white polish was done but original design is disturbed due to polishing, bangles are not in original position. Hence, Archika has right to avoid the agreement to sell and can recover the price paid.

(b) On the other hand, if shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Archika. Even he has to bear some expenses for repair; he cannot charge it from Archika.

Q39

Explain the term goods and other related terms under the Sale of Goods Act, 1930. [MTP Oct 18, 4 Marks]

Answer:

"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. [Section 2(7) of the Sales of Goods Act, 1930]

'Actionable claims' are claims, which can be enforced only by an action or suit, e.g., debt. A debt is not a movable property or goods. Even the Fixed Deposit Receipts (FDR) are considered as goods under Section 176 of the Indian Contract Act read with Section 2(7) of the Sales of Goods Act.

Related Question: Differentiate between Ascertained and Unascertained Goods with example. [Nov 18, 4 Marks]

Answer:

Ascertained Goods

1. Those goods which are identified in accordance with the agreement after the contract of sale is made. This term is not defined in the Act but has been judicially interpreted. In actual practice the term 'ascertained goods' is used in the same sense as 'specific goods.'

2. When from a lot or out of large quantity of unascertained goods, the number or quantity contracted for is identified, such identified goods are called ascertained goods.

Unascertained goods

The goods which are not specifically identified or ascertained at the time of making of the contract are known as 'unascertained goods'. They are indicated or defined only by description or sample.

Q40

Akansh purchased a Television set from Jethalal, the owner of Gada Electronics on the condition that first three days he will check its quality and if satisfied he will pay for that otherwise he will return the Television set. On the second day, the Television set was spoiled due to an earthquake. Jethalal demands the price of Television set from Akansh. Whether Akansh is liable to pay the price under the Sale of Goods Act,1930? If not, who will ultimately bear the loss? [RTP Nov 21] [RTP Nov 22]

Answer:

According to Section 24 of the Sale of Goods Act, 1930, "When the goods are delivered to the buyer on approval or on sale or return or other similar terms the property passes to the buyer:

(i) when he signifies his approval or acceptance to the seller,

(ii) when he does any other act adopting the transaction, and

(iii) if he does not signify his approval or acceptance to the seller but retains goods beyond a reasonable time".

Further, as per Section 8, where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

According to above provisions and fact, the property is not passes to Akansh i.e. buyer as no condition of Section 24 is satisfied. Hence, risk has not passed to buyer and the agreement is thereby avoided. Akansh is not liable to pay the price. The loss finally should be borne by Seller, Mr. Jethalal.

Ascertainment of price [Section 9(1)]

(1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

Q41

X contracted to sell his car to Y. They did not discuss the price of the car at all. X later refused to sell his car to Y on the ground that the agreement was void being uncertain about price. Can Y demand the car under the Sale of Goods Act, 1930? [RTP Nov 21] [Module Back Question]

Answer:

Payment of the price by the buyer is an important ingredient of a contract of sale. If the parties totally ignore the question of price while making the contract, it would not become an uncertain and invalid agreement. It will rather be a valid contract and the buyer shall pay a reasonable price. (Section 9 (2) of the Sale of Goods Act, 1930)

In the give case, X and Y have entered into a contract for sale of car but they did not fix the price of the car. X refused to sell the car to Y on this ground. Y can legally demand the car from X and X can recover a reasonable price of the car from Y.

Related Question: Mr. A contracted to sell his swift car to Mr. B. Both missed to discuss the price of the said swift car. Later, Mr. A refused to sell his swift car to Mr. B on the ground that the agreement was void being uncertain about the price. Does Mr. B have any right against Mr. A under the Sale of Goods Act, 1930? (4 Marks June 23)

Answer:

As per the provisions of Section 2(10) of the Sale of Goods Act, 1930, price is the consideration for sale of goods and therefore is a requirement to make a contract of sale. Section 2(10) is to be read with Section 9 of the Sale of Goods Act, 1930.

According to Section 9 of the Sale of Goods Act, 1930, the price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
Even though both the parties missed to discuss the price of the car while making the contract, it will be a valid contract, rather than being uncertain and void; the buyer shall pay a reasonable price in this situation.

In the given case, Mr. A and Mr. B have entered into a contract for sale of a motor car, but they did not fix the price of the same. Mr. A refused to sell the car to Mr. B on this ground. Mr. B can

legally demand the car from Mr. A and Mr. A can recover a reasonable price of the car from Mr. B.

Agreement to sell at valuation [Section 10]

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Example: P is having two bikes. He agrees to sell both of the bikes to S at a price to be fixed by the Q. He gives delivery of one bike immediately. Q refuses to fix the price. As such P ask S to return the bike already delivered while S claims for the delivery of the second bike too. In the given instance, buyer S shall pay reasonable price to P for the bike already taken. As regards the Second bike, the contract can be avoided.

Q42

A let a piano to b on hire, on the following terms that:

(a) If B regularly pays 36 monthly instalments, the piano shall become his property.

(b) B can terminate the hire at any time and return the piano to A, and need not pay any more.

After paying a few instalments, B pledged the piano with C. A brought a legal action against C to recover the piano. Advise whether A will succeed in such legal action as per the provision of the Sale of Goods Act, 1930? **[ACT Test Question 1]**

1. Hire Purchase is a contract in which the owner of Goods allows their use by another person called hire purchaser. The owner of Goods gets hire charges in instalments upon an agreement that the Hire Purchaser will become the owner after payment of last instalment. Thus, it is a bailment with an option to buy.
2. Hire Purchaser is only a bailee of Goods taken on hire purchase until the payment of stipulated number of instalments.
3. Hire Purchaser has an option to terminate the contract at any stage. He cannot be forced to pay the instalments and take the Goods.
4. Under a Hire Purchase contract, the third party would not get a good title, since the hirer had no title to the Goods
5. In the instant case A could recover piano from C since B had no right to pledge the piano because he was not its owner. He had the possession only under a hire purchase agreement.

In this case, B had the option to buy the piano by paying all the 36 instalments. And he was not under any legal obligation to purchase the piano.

Q43

Avyukt purchased 100 Kgs of wheat from Bhaskar at Rs. 30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood. Now Avyukt wants his price on the contention that no delivery has been done by seller. Whether Avyukt is right with his views under the Sale of Goods Act, 1930. [MTP Nov 21 - 6 Marks] [RTP June 23]

Answer:

As per the provisions of the Sale of Goods Act, 1930 there are three modes of delivery, i) Actual delivery, ii) Constructive delivery and iii) Symbolic delivery. When delivery is affected without any change in the custody or actual possession of the things, it is called constructive delivery or delivery by acknowledgement. Constructive delivery takes place when a person in possession of goods belonging to seller acknowledges to the buyer that he is holding the goods on buyer's behalf.

In the instant case, Kishore acknowledges Avyukt that he is holding wheat on Avyukt's behalf. Before picking the wheat from warehouse by Avyukt, whole wheat was flowed in flood.

On the basis of above provisions and facts, it is clear that possession of the wheat has been transferred through constructive delivery. Hence, Avyukt is not right. He cannot claim the price back.

The Sale of Goods Act, 1930

Unit 2: Conditions & Warranties - Complete unit is Important

Some hot topics
Section 13 | 15 | 16 |17

Q44

A, a customer, went to B, a horse dealer, and told him that he wanted to buy a healthy horse. B pointed at a particular horse and said it to be healthy. Moerover, B informed A that the particular horse can also run at a speed of 40 k.m. per hour. A bought that particular horse. Subsequently, A found the horse to be healthy. But it could run only at a speed of 20 k.m. per hour. A wanted to reject the horse and to have the refund of the price. Advise A as per the provisions of the Sale of Goods Act,1930 **(4 Marks) [ACT Test Question]**

Answer:

Condition and warranty

1. As per section 12 of the Sale of Goods Act,1930:
   - A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
   - "A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated."
   - "A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated."
2. In this case, the representation made by the seller (B) is a warranty because it is only collateral to the main purpose. Thus, A cannot reject the horse on this ground.

Q45

When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain. [RTP May 19] [RTP NOV 20] [Back Question of Module] CS LLM Arjun Chhabra (Law Maven) Mo: 62 62 62 143 8 [RTP May 21] [Dec 21] [RTP May 22 – 4 Marks]

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

(i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition,

(ii) Where the buyer elects to treat the breach of condition as breach of a warranty.

(iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.

(iv) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Q46

A advertised his car for sale as a "Herald Convertible, white 1961 Model". B examined the car and bought it. Subsequently, B discovered that the car was made of two parts which had been welded together. And only one part was of 1961 Model, whereas the other part was of old model. Advise B whether b could reject the goods as per the provisions of Sale of Goods Act, 1930.? **(4 Marks)**

Answer:

Condition as to description [Section 15]

1. Sometimes, the goods are sold by description: In such cases, the implied condition is that the goods shall correspond with the description. The term 'correspondence with description' means that the goods purchased by the buyer must be the same which were described by the seller. If subsequently, it is discovered that the goods do not correspond with the description, the buyer may reject the goods and claim the refund of the price, if already paid.
2. In the instant case the sale was by description and B could reject the car as it did not correspond with the description. In this case, although B has examined the car, but he relied upon the description given by the seller (A).

Q47

A bought 'hessian cloth' from B, a cloth merchant. Such cloth was generally used for packing purposes. It was found that due to unusual smell, the cloth was unfit for packing foodstuffs, though it was good as a packing cloth for other purposes. A wanted to reject the cloth on the ground that it was unfit for his purposes as he required it for packing foodstuffs. Advise A as per the provisions of the Sale of Goods Act,1930 **(3 Marks)**

Answer:

Fitness of Cloth: As per the provision of Section 16(1) of the Sale of Goods Act, 1930

An implied condition in a contract of sale that an article is fit for a particular purpose only arises when:

1. The purpose for which the goods are supplied is known to the seller
2. The buyer relied on the seller's skills or judgement and
3. Seller deals in the goods in his usual course of business.

In the instant case the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so.

In this case, A was not allowed to reject the cloth as he never disclosed his particular purpose to the seller at the time of buying the 'hessian cloth".

Q48

Prashant reaches a sweet shop and ask for 1 Kg of 'Burfi' if the sweets are fresh. Seller replies' "Sir, my all sweets are fresh and of good quality." Prashant agrees to buy on the condition that first he tastes one piece of 'Burfi' to check the quality. Seller gives him one piece to taste. Prashant, on finding the quality is good, ask the seller to pack. On reaching the house, Prashant finds that 'Burfi' is stale not fresh while the piece tasted was fresh. Now, Prashant wants to avoid the contract and return the 'Burfi' to seller.

(a) State with reason whether Prashant can avoid the contract under the Sale of Goods Act, 1930?

(b) Will your answer be different if Prashant does not taste the sweet? [RTP Nov 21]

Answer:

According to Section 17 of the Sale of Goods Act, 1930, in the case of a contract for sale by sample there is an implied condition that the bulk shall correspond with the sample in quality and the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. If the goods do not correspond with implied condition, the buyer can avoid the contract and reject the goods purchased.

(a) In the instant case, the sale of sweet is sale by sample and the quality of bulk does not correspond with quality of sample. Hence, Prashant can return the sweet and avoid the contract.

(b) In the other case, the sale of sweet is the case of sale by description and the quality of goods does not correspond with description made by seller. Hence, answer will be same. Prashant can return the sweet and avoid the contract.

The Sale of Goods Act, 1930

Unit 3: Transfer of Ownership and Delivery of Goods

1. Transfer of property in unascertained goods (Section 18 & 23) (Strong possibility)
2. Goods sent on approval or "on sale or return (Section 24)
3. Risk prima facie passes with property & its exception (Section 26)
4. Sale by non-owner (Section 27 to 30)

Q49

What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods. [May 18, 6 Marks] [Nov 19, 4 Marks] [Nov 22, 4 Marks] [RTP Dec 23]

1. Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not.
2. Further Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are

   i. Ascertained [Section 18]

   ii. Appropriation: For property to pass u/s 23, the following conditions must be satisfied -

   (a) Goods of the description mentioned in the contract must be produced or obtained.

   (b) They must be in a deliverable state

   (c) They must be unconditionally appropriated to the contract. Unconditional appropriation is where, in pursuance of the contract, Seller –

   (i) delivers the Goods to Buyer or to a carrier or other bailee for their transmission to Buyer and

   (ii) does not reserve the right of disposal. [Sec. 23(2)]

   (d) The assent of the parties may be given expressly or impliedly and can be given either before or after the appropriation.

   (e) Example: A having a quantity of sugar in bulk, more than sufficient to fill 20 bags, contracts to sell to B 20 bags of it. After the contract A fills 20 bags with the sugar, gives notice to B that the bags are ready and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B property in the sugar passes to B.

3. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.
4. Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.

Q50

The buyer took delivery of 20 tables from the seller on sale or return basis without examining them. Subsequently, he sold 5 tables to his customers. The customer lodged a complaint of some defect in the tables. The buyer sought to return tables to the seller. Was the buyer entitled to return the tables to the seller under the provisions of the Sale of Goods Act, 1930? [Module Back Question]

Answer:

Goods sent on Approval or on Sale or Return basis [Sec. 24]: In case of Sale on "Sale or Return" basis, property in the goods passes to the buyer if -

(a) Approval: Buyer signifies his approval or acceptance to the Seller, or

(b) Retention of Goods: Buyer retains the Goods without giving notice of rejection within the agreed time frame or if no time frame has been agreed, within a reasonable time.

(c) Adopting the transaction: Buyer does any act adopting the transaction i.e. any act exercising domination over the goods showing an unequivocal intention to buy, e.g. if he pledges the goods with a third party.

In the given case

Seller has delivered 20 tables to the buyer on sale or return basis. Buyer received the tables without examining them. Out of these 20 tables, he sold 5 tables to his customer. It implies that he has accepted 5 tables out of 20.

When the buyer received the complaint of some defect in the tables, he wanted to return all the tables to the seller. According to the provisions of law he is entitled to return only 15 tables to the seller and not those 5 tables which he has already sold to his customer. These tables are already accepted by him so the buyer becomes liable under the doctrine of "Caveat Emptor".

Related Question: A delivered a horse to B on sale and return basis. The agreement provided that B should try the horse for 8 days and return, if he did not like the horse. On the third day the horse died without the fault of B. A files a suit against B for the recovery of price. Can he recover the price? [Module Back Question]

Answer:

A delivered the horse to B on sale or return basis. It was decided between them that B will try the horse for 8 days and in case he does not like it, he will return the horse to the owner A. But on the third day the horse died without any fault of B. The time given by the seller A to the buyer B has not expired yet.

Therefore, the ownership of the horse still belongs to the seller A. B will be considered as the owner of the horse only when B does not return the horse to A within stipulated time of 8 days.

The suit filed by A for the recovery of price from B is invalid and he cannot recover the price from B. [Section 24]

Section-26 Risk prima facie passes with property

Q51

"Risk Prima facie passes with the property" Elaborate in the Context to the Sale of Goods Act, 1930. [July 21 – 4 marks]

Answer:

1. Seller's risk: Unless otherwise agreed upon, goods remain only at the Seller's risk until the property therein is transferred to the Buyer. Hence, risk is borne by the Buyer, only when the property in the Goods passes over to him.

2. Risk passes with property: When the property in Goods is transferred to Buyer, goods are at the Buyer's risk, irrespective of whether delivery has been made or not. [Sec. 26]

3. Exceptions: The following are the exceptions to the general rule that risk passes with property-

(a) Delayed delivery: Where delivery of Goods has been delayed through the fault of either Buyer or Seller, goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

(b) Agreement between parties: The parties may by special agreement stipulate that 'risk' will pass sometime after or before passing of property.

(c) Usage of Trade: In some cases trade customs may put the ownership and risk separately in two parties.

4. Bailee's Duties: Nothing contained in Sec. 26 shall affect the duties or liabilities of either the Seller or Buyer as a bailee of Goods of the other party.

Transfer of title

Section-27 Sale by person not the owner

1. Meaning: Nemo dat quod non habet, i.e, No one can give or transfer what he does not himself possess. Hence only a true owner can transfer to another person, a good and valid title over the Goods. A Seller who himself does not have the ownership cannot confer the same upon the Buyer.

2. Transfer by non-owner [Sec. 27]: If any person who does not possess good title to the Goods and makes the sale, the Buyer would not acquire title even though he has acquired it bonafide and for value.

Q52

"Nemo Dat Quod Non Habet" – "None can give or transfer goods what he does not himself own." Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930. [May 19, 6 Marks] [RTP May 20] [MTP Oct 20 – 6 Marks] [Back Question of Module] [Dec 20, 6 Marks] [RTP Nov 21] [MTP Oct 21 – 6 Marks] [MTP Nov 21 – 4 Marks] [MTP Nov 22 – 4 Marks]

Answer:

1. Exceptions to the Rule "Nemo dat Quod Non Habet": The term means, "no one can give or transfer goods what he does not himself own".
2. Exceptions to the rule and the cases in which the Rule does not apply under the provisions

of the Sale of Goods Act, 1930 are enumerated below:

(i) Effect of Estoppel (Section 27): Where the owner is stopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.

(ii) Sale by a Mercantile Agent [Sec. 27 Proviso]: Such sale is proper and transfers good title to Buyer only when -

a. The mercantile agent is in possession of the Goods or of a document of title to Goods with consent of the owner,

b. The agent sells those Goods in the ordinary course of business as a Mercantile Agent,

c. The Buyer buys them in good faith, for value, and

d. The Buyer does not have any notice at the time of contract, that the Seller has no authority to sell.

Example: F handed over his car to H for sale at an amount not less than £575. H sold the same for £140 to K, who bought in good faith and without knowledge of any fraud. H misappropriated the money. Held, H had possession of the car with the consent of F for sale and since he had acted in the capacity of a mercantile agent, K got good title for the car. [Folkes v. King]

(iii) Sale by one of the joint owners: If one of the several joint owners of goods has the sole possession of them with the permission of the others, the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. (Section 28)

(iv) Sale by a person in possession under voidable contract: A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

(v) Sale by one who has already sold the goods but continues in possession thereof: If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)]

(vi) Sale by buyer obtaining possession before the property in the goods has vested in him: Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section 30(2)]

(vii) Sale by an unpaid seller: Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54(3)]

(viii) Sale under the provisions of other Acts:

(i) Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.

(ii) Purchase of goods from a finder of goods will get a valid title under circumstances.

Sale by a pawnee under default of pawnor will give valid title to the purchaser.

Related Question: J the owner of a Fiat car wants to sell his car. For this purpose, he hands over the car to P, a mercantile agent for sale at a price not less than Rs. 50, 000. The agent sells the car for Rs. 40, 000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the Car. Decide given reasons whether J would succeed. [RTP May 18] [RTP Nov 19] [RTP Nov 20]

Answer:

(i) The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27.

(ii) Sale by a Mercantile Agent [Sec. 27 Proviso]: Same as above

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A.

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

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

(ii) Mr. Shekhar can recover his car from Mr. Masoom? [MTP Nov 21- 4 Marks] [RTP June 23]

Answer:

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.

Section 28 - Sale by one of joint owners

Related Question: A, B and C were joint owner of a truck and the possession of the said truck was with B. X purchased the truck from B without knowing that A and C were also owners of the truck. Decide in the light of provisions of Sales of Goods Act 1930, whether the sale between B and X is valid or not? [Module Back Question]

Answer:

According to Section 28 of the Sales of Goods Act, sale by one of the several joint owners is valid if the following conditions are satisfied;

(i) One of the several joint owners has the sole possession of them.
(ii) Possession of the goods is by the permission of the co-owners.
(iii) The buyer buys them in good faith and has not at the time of contract of sale knowledge that the seller has no authority to sell.

In the above case, A, B and C were the joint owners of the truck and the possession of the truck was with B. Now B sold the said truck to X. X without knowing this fact purchased the truck from B.

The sale between B and X is perfectly valid because Section 28 of the Sales of Goods Act provides that in case one of the several joint owners has the possession of the goods by the permission of the co- owners and if the buyer buys them in good faith without the knowledge of the fact that seller has no authority to sell, it will give rise to a valid contract of sale.

Section - 29 Sale by person in possession under voidable contract.

Related Question: A went to B's shop and selected some jewellery. He falsely represented himself to be a man of credit and thereby persuaded B to take the payment by cheque. He further requested him to hand over the particular type of ring immediately. On the due date, when the seller, B presented the cheque for payment, the cheque was found to be dishonoured. Before B could avoid the contract on the ground of fraud by A, he had sold the ring to C. C had taken the ring in good faith and without any notice of the fact that the goods with A were under a voidable contract. Discuss if such a sale made by non-owner is valid or not as per the provisions of Sale of Goods Act, 1930? [RTP May 22]

Answer:

Section 27 of Sale of Goods Act, 1930 states that no man can sell the goods and give a good title unless he is the owner of the goods. However, there are certain exceptions to this rule of transfer of title of goods.

One of the exceptions is sale by person in possession under a voidable contract (Section 29 of Sale of Goods Act, 1930)

1. If a person has possession of goods under a voidable contract.
2. The contract has not been rescinded or avoided so far
3. The person having possession sells it to a buyer
4. The buyer acts in good faith

5. The buyer has no knowledge that the seller has no right to sell.

Then, such a sale by a person who has possession of goods under a voidable contract shall amount to a valid sale and the buyer gets the better title.

Based on the provisions, Mr. A is in possession of the ring under a voidable contract as per provisions of Indian Contract Act, 1872. Also, B has not rescinded or avoided the contract, Mr. A is in possession of the ring and he sells it new buyer Mr. C who acts in good faith and has no knowledge that A is not the real owner. Since all the conditions of Section 29 of Sale of Goods Act, 1930 are fulfilled, therefore sale of ring made by Mr. A to Mr. C is a valid sale.

Section 30 - Seller or buyer in possession after sale

Sale by person in possession after sale

Related Question: Sohan is a trader in selling of wheat. Binod comes to his shop and ask Sohan to show him some good quality wheat. Binod is satisfied with the quality of wheat. Sohan agrees to sell 100 bags of wheat to Binod on 10th June 2021.

The delivery of wheat and the payment was to be made in next three months i.e. by 10 th September 2021 by Binod. Before the goods are delivered to Binod, Sohan gets another customer Vikram in his shop who is ready to pay higher price for the wheat. Sohan sells the goods of Binod (which were already lying in his possession even after sale) to Vikram. Vikram has no knowledge that Sohan is not the owner of goods. With reference to Sale of Goods Act,1930, discuss if such a sale made by Sohan to Vikram is a valid sale? [RTP May 22 - 6 Marks]

Answer:

The given question deals with the rule related to transfer of title of goods. Section 27 of the Sale of Goods Act ,1930 specify the general rule " No man can sell the goods and give a good title unless he is the owner of the goods". The latin maxim " NEMO DET QUOD NON HABET". However, there are certain exceptions to this rule. One of the exceptions is given in Section 30 (1) of Sale of Goods Act,1930 wherein the sale by seller in possession of goods even after sale is made, is held to be valid. If the following conditions are satisfied, then it amounts to a valid sale although the seller is no more the owner of goods after sale.

(i) A seller has possession of goods after sale
(ii) with the consent of the other party (i.e. buyer)
(iii) the seller sells goods (already sold) to a new buyer
(iv) the new buyer acts in good faith
(v) The new buyer has no knowledge that the seller has no authority to sell.

In the given question, the seller Sohan has agreed to sell the goods to Binod, but delivery of the goods is still pending. Hence Sohan is in possession of the goods and this is with the consent of buyer i.e. Binod. Now Sohan sell those goods to Vikram, the new buyer. Vikram is buying the goods in good faith and also has no knowledge that Sohan is no longer the owner of goods.

Since all the above conditions given under Section 30 (1) of Sale of Goods Act, 1930 are satisfied, therefore the sale made by Sohan to Vikram is a valid sale even if Sohan is no longer the owner of goods.

The Sale of Goods Act, 1930

Unit 4: Unpaid Seller Complete unit is Important

Some hot topics

1. Unpaid seller and his rights against **goods**
2. Auction sale

Q53

What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930? [Nov 19, 6 Marks]

Unpaid Seller

According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

(a) the whole of the price has not been paid or tendered.

(b) a bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.

Rights of an unpaid seller against the goods: As per the provisions of Section 46 of the Sale of Goods Act, 1930, Rights of an Unpaid Seller against the goods are as follows:

When Property in Goods has passed to the Buyer -	When property in Goods has NOT passed to the Buyer -
• Right of Lien on the Goods in his possession, • Right of stoppage of Goods in transit if the Buyer becomes insolvent, • Right of Resale.	In addition to those 3 remedies, the right of withholding delivery.

These rights can be exercised by the unpaid seller in the following circumstances:

(i) Right of lien (Section 47): According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely: -

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

Note: The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

According to Section 49 the unpaid seller loses his lien on goods:

1. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
2. When the buyer or his agent lawfully obtains possession of the goods
3. By waiver thereof.

Note: The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree to the price of the goods.

(ii) Right of stoppage in transit (Section 50): When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer and may retain them until paid or tendered price of the goods.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

(a) The seller must be unpaid.
(b) The seller must have parted with the possession of goods.
(c) The goods must be in the course of transit.
(d) The buyer must have become insolvent.
(e) The right is subject to provisions of the Act.

(iii) Right to re-sell the goods (Section 54): The unpaid seller can exercise the right to re-sell the goods under the following conditions:

(i) Where the goods are of a perishable nature: In such a case, the buyer need not be informed of the intention of resale.

(ii) Where he gives notice to the buyer of his intention to re-sell the goods: If after the receipt of such notice the buyer fails within a reasonable time to pay or tender the price, the seller may resell the goods.

It may be noted that in such cases, on the resale of the goods, the seller is also entitled to:
(a) Recover the difference between the contract price and resale price, from the original buyer, as damages.
(b) Retain the profit if the resale price is higher than the contract price.

It may also be noted that the seller can recover damages and retain the profits only when the goods are resold after giving the notice of resale to the buyer. Thus, if the goods are resold by the seller without giving any notice to the buyer, the seller cannot recover the loss suffered on resale. Moreover, if there is any profit on resale, he must return it to the original buyer, i.e. he cannot keep such surplus with him [Section 54(2)].

(iii) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods: The subsequent buyer acquires the good title thereof as against the original buyer, despite the fact that the notice of re-sale has not been given by the seller to the original buyer.

(iv) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale: Sometimes, it is expressly agreed between the seller and the buyer that in case the buyer makes default in payment of the price, the seller will resell the goods to some other person. In such cases, the seller is said to have reserved his right of resale, and he may resell the goods on buyer's default.

It may be noted that in such cases, the seller is not required to give notice of resale. He is entitled to recover damages from the original buyer even if no notice of resale is given.

(v) Where the property in goods has not passed to the buyer: The unpaid seller has in addition to his remedies a right of withholding delivery of the goods. This right is similar to lien and is called "quasi-lien".

Auction Sale

Q54

Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the "Sale by Auction." [RTP Nov 18] [Jan 21- 4 Marks]

Answer:

Rules of Auction sale: Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction:

(a) Where goods are sold in lots: Where goods are put up for sale in lots, each lot is *prima facie* deemed to be subject of a separate contract of sale.

(b) Completion of the contract of sale: The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.

(c) Right to bid may be reserved: Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

(d) Where the sale is not notified by the seller: Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

(e) Reserved price: The sale may be notified to be subject to a reserve or upset price; and

(f) Pretended bidding: If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Related Question: Rachit arranges an auction to sale an antic wall clock. Megha, being one of the bidders, gives highest bid. For announcing the completion of sale, the auctioneer fall the hammer on table but suddenly hammer brakes and damages the watch. Megha wants to avoid the contract. Can she do so under the provisions of the Sale of Goods Act, 1930? [RTP Nov 21]

Answer:

According to Section 64 of the Sale of Goods Act, 1930, in case of auction sale, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in some other customary manner.

In the instant case, Megha gives the highest bid in the auction for the sale of antic wall clock arranged by Rachit. While announcing the completion of sale by fall of hammer on the table, hammer brakes and damages the clock.

On the basis of above provisions, it can be concluded that the sale by auction cannot be completed until hammer comes in its normal position after falling on table. Hence, in the given problem, sale is not completed. Megha will not be liable for loss and can avoid the contract.

Related Question: An auction sale of the certain goods was held on 7th March, 2023 by the fall of hammer in favour of the highest bidder X. The payment of auction price was made on 8th March, 2023 followed by the delivery of goods on 10th March, 2023. Based upon on the provisions of the Sale of Goods Act, 1930, decide when the auction sale is complete. (2 Marks June 23)

Answer:

According to Section 64 of the Sale of Goods Act, 1930, the sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner. In the given question, the auction sale is complete on 7th March, 2023.

P sold a car by auction. It was knocked down to Q who was only allowed to take it away on giving a cheque for the price and signing an agreement that ownership should not pass until the cheque was cleared. In the meanwhile till the cheque was cleared, Q sold the car to R. It was held that the property was passed on the fall of the hammer and therefore R had a good title to the car. Both sale and sub sale are valid in favour of Q and R respectively.

The Indian Partnership Act, 1932

Unit 1: General Nature of Partnership

1. Definition of partnership & its essentials (Section 4)
2. Mode of determining existence of partnership (Section 6)
3. Types of partners (From module)
4. Partner by holding out (Section 28)

Q55

Define Partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail. [Dec 21, 6 Marks] [RTP May 22 – 4 Marks]

Answer:

Definition — Sec. 4: Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

The essential elements for the existence of a partnership as per the Indian Partnership Act, 1932 are as follows:

1) Association of two or more person
2) Agreement between person
3) Business
4) Sharing of profit
5) A business carried on by all or any of them acting for all (Mutual Agency)

ASSOCIATION OF TWO OR MORE PERSONS: Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the patners, may be admitted to the benefits of partnership.

The partnership Act is silent about the maximum number of partners but section 464 of the Companies Act, 2013 has now put a limit of 50 partners in any association/partnership firm.

AGREEMENT BETWEEN PERSON: Partnership originates from an Agreement/Contract between persons. Agreement may be express (written or oral) or implied.

BUSINESS: Partnership can be formed only for the purpose of carrying on some business. 'Business' includes trade, occupation and profession. Associations created for charitable, religious and social purposes are not Partnerships.

SHARING OF PROFIT:

a) Sharing the profits of business is the essence of Partnership but it cannot be the conclusive evidence as to existence of Partnership.
b) Sharing of profits implies sharing of losses as well, unless agreed otherwise.
c) A person may become a Partner only in profits and not for losses by agreement between all Partners.

d) Ratio in which profits and losses will be shared is based on agreement amongst the Partners.

e) Though sharing of profits of a business is essential, it does not mean that everyone who participates in the profits of a business is necessarily a Partner, e.g. a Manager, as a part of his remuneration, may be given a share in profits of the business. He does not thereby become a Partner.

BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners.

(a) A Partner is both an agent and a principal.

(b) He can, by his acts, bind other Partners and is in turn bound by acts of other Partners.

(c) It is not essential that all Partners should actively participate in business. Business may be managed by one or more Partners and remaining Partners will be bound by their acts provided such acts relate to carrying on Firm's business and have been done in the Firm's name.

It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

Related Question:

Decide in the following cases whether A and B is having partnership?

(a) A, the licensed proprietor of a theatre, lets the use of it to B for dramatic entertainments. A manages the theatre and bears all its expenses. He also incurs certain expenses for advertising and the band. He also collects door money. He retains half of it and hands over the other half to B.

(b) A and B, co-owners of a house, let it to a paying guest. They divide the net rent between them.

(c) A, a publisher, agrees to publish at his own expense, a book written by B and to pay B half the net profits.

(d) A and B separately tender for a contract to cut and remove bamboos from a certain jungle. They mutually agree that each one of them shall be entitled to a certain share of the bamboos, no matter whosover is granted the contract, and each one is entitled to deal with his share of the bamboos as his personal concern.

(e) A and B are joint owners of a ship. A works on the ship, takes care of the entire management and meets all the expenses. He takes two-thirds of gross earnings and pays over the balance to B who does nothing. (7 Marks)

Answer:

1. As per section 4 of the Indian Partnership Act, 1932, Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
2. The essential elements for the existence of a partnership as per the Indian Partnership Act, 1932 are as follows:
    1) Association of two or more person
    2) Agreement between person
    3) Business
    4) Sharing of profit
    5) A business carried on by all or any of them acting for all (Mutual Agency)
3. In the light of the above provision and facts of the instant case:
    a) No, this is not a case of partnership since there is no mutual agency.
    b) No, Joint owners sharing Gross Returns arising from property held by them are not Partners. [Explanation to section 6]
    c) No, this is not a case of partnership since there is no mutual agency.
    d) No, this is not a case of partnership since there is neither sharing of profit nor mutual agency.
    e) No, Joint owners sharing Gross Returns arising from property held by them are not Partners. [Explanation to section 6]
    Alternatively: No, this is not a case of partnership since there is no mutual agency.

Related Question:

A, a surgeon and druggist, sold his practice to B along with the name and style under which A was carrying on his practice. It was agreed that A to the best of his efforts introduce B to his patients, and to do every reasonable act for promoting B's profession. And B allowed a portion of the profits to A. Whether A and B can be considered as partner as per the provision of the Indian Partnership Act, 1932? **(3 Marks)**

Answer:

Sharing of profit is not conclusive evidence of partnership

1. As per section 4 of the Indian Partnership Act, 1932 "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

2. As per explanation II of section 6 The receipt by a person of a share of the profits of a business does not itself make him a partner with the persons carrying on the business and, in particular, the receipt of such share by a previous owner of the business as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business.
3. In simple words, Seller of goodwill: Sometimes, a person who sells his business along with its goodwill, is given a share in the profits of the business he has sold. In such cases, that person does not become a partner in the business only on the ground that he receives the profits of the business.
4. As per the explanation given above, in the instant case A and B are not partners in the profession merely because they are sharing profit.

Q56

A, a money-lender, gave a loan to B for establishing a cattle farm. A took very deep interest in the business and used his personal influence for obtaining the lease of the premises for the farm. Moreover, he also used to be present in the farm and was receiving parties and their demands. C supplied some building material to the farm under the impression that A was a partner. Whether A is liable to C if B fails to pay for building material? **[2 Marks]**

Answer:

Here, A would be liable as a partner by holding out. In this case, by his own conduct, A had represented himself to be a partner of the firm. **[Section 28 (1)]**

The Indian Partnership Act, 1932

Unit 2: Relations of Partners – Very Imp Unit

1. Reconstitution of firm
   - **Expulsion** (Strong possibility)
   - **Death** (Strong possibility)
   - **Transfer of Int** (Strong possibility)
2. Right to remuneration (Section 13)
3. Personal profit earned by partners (Section 16)
4. Implied authority of partner as agent of the firm (Section 19, 20 & Section 22)
5. Effect of notice to acting partner (Section 24)
6. Liability to third parties (Section 25 to 27)
7. Minors admitted to the benefits of partnership (Section 30)
8. Rights of outgoing partner to carry on competing business |to share subsequent profits (Section 36 & 37)

Q57

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Due to expansion of business, they planned to hire another partner Mr A. Now the firm has 4 partners X, Y, Z and A. The business was continuing at normal pace. In one of formal business meeting, it was observed that Mr. Y misbehaved with Mrs. A (wife of Mr. A). Mr. Y was badly drunk and also spoke rudely with Mrs. A.

Mrs. A felt very embarrassed and told her husband Mr. A about the entire incident. Mr. A got angry on the incident and started arguing and fighting with Mr. Y in the meeting place itself. Next day, in the office Mr. A convinced X and Z that they should expel Y from their partnership firm. Y was expelled from partnership without any notice from X, A and Z.
Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances? [MTP Nov 21 – 6 marks]

Answer:

(a) Expulsion of a Partner [Sec. 33]: A Partner cannot be expelled from a Firm by a majority of Partners except in the exercise in good faith of powers conferred by the contract between the Partners.

(b) Good Faith: Hence, for any expulsion by majority, it is necessary that -

- The power of expulsion must have existed in the contract between Partners,
- Such power has been exercised by a majority of the Partners, and
- Such power has been exercised in good faith for the interest of the Firm and not used as vengeance against a Partner.

(c) What constitutes Good Faith? An expulsion is said to be in good faith if -

- Such expulsion is done to protect the interests of Partnership and of the Firm,
- The Partner who is to be expelled had been served with a Notice,
- Such Partner has given an opportunity of being heard.

(d) Expulsion Void: When a Partner is otherwise expelled than in good faith, it is null and void. He continues to be a Partner, and can (a) claim reinstatement or (b) sue for the refund of his share

of Capital and profits in the Firm.

(e) Position of Expelled Partner: The provisions of Sec. 32 regarding liability of a Retired Partner to Third parties and giving of public notices apply to an expelled Partner as well, as if he was a retired Partner.

According to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid as he was not served any notice and also he was not given an opportunity of being heard. Also the matter of fight between A and Y was on personal reasons, hence not satisfying the test of good faith in the interest of partnership. Since the conditions given under above provisions are not satisfied, the expulsion stands null and void.

Q58

M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death. fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited.

Explain with reasons:

(i) Whether P's private estate is liable for the price of furniture purchased by the firm?

(ii) Whether does it make any difference if JR Limited supplied the furniture to the firm believing that all the three partners are alive? [Jan 21 - 6 Marks] [RTP May 21]

Liability of estate of deceased partner [Sec. 35]:

(a) The Firm is generally dissolved on the death of a Partner.

(b) However, the surviving partners are competent to agree that the death of one will not have the effect of dissolving the partnership firm and they may agree to continue the partnership business after death of partner unless the firm consists of only two partners.

(c) When under a contract between the Partners, the Firm is not dissolved by the death of a Partner,

- the estate of deceased Partner remains liable only for such acts as were done during the tenure of his Partnership, and
- His estate is NOT liable for any act of the Firm done after his death.

(d) No public notice is required on the death of a Partner.

Therefore, considering the above provisions, the problem may be answered as follows:

(i) P's estate in this case will not be liable for the price of the furniture purchased by the firm because the furniture was delivered after p's death.

(ii) If JR Limited supplied the furniture to the firm believing that all three partners are alive would not make any difference. Still, P's private estate would not stand liable for the price of the furniture.

Q59

Mr. M is one of the four partners in M/s XY Enterprises. He owes a sum of ₹ 6 crore to his friend Mr. Z which he is unable to pay on due time. So, he wants to sell his share in the firm to Mr Z for settling the amount. In the light of the provisions of The Indian Partnership Act, 1932, discuss each of the following:

(i) Can Mr. M validly transfer his interest in the firm by way of sale?

(ii) What would be the rights of the transferee (Mr. Z) in case Mr. M wants to retire from the firm after a period of 6 months from the date of transfer? [July 21 – 6 marks] [RTP May 22 – 6 marks]

Answer:

Rights of transferee or a partner's interest [Section 29 of The Indian Partnership Act, 1932]

A share in a partnership is transferable like any other property, but as the partnership is based on a mutual agency, the transferee of a partner's interest by sale, mortgage or otherwise, cannot enjoy the same rights and privileges as the original partner.

In the light of the above provision and facts of the case Mr. M can validly transfer his interest in the firm by way of sale.

The rights of a transferee (Mr. Z) are as follows:

1. During the continuation of the partnership, such transferee is not entitled
   a) to interfere with the conduct of the business,
   b) to require accounts, or
   c) to inspect the books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

2. On dissolution of the firm or on the retirement of the transferring partner, the transferee partner is entitled [Section 29(2)]
   a) to receive the share of assets of the firm to which the transferring partner was entitled and
   b) for the purpose of ascertaining the share, he is entitled to an account from the date of the dissolution.

Q60

Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ` 20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by

existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm? [RTP May 22]

Answer:

By virtue of provisions of Section 13(a) of the Indian Partnership Act, 1932 a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule can always be varied by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration. Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm. In other words, where it is customary to pay remuneration to a partner for conducting the business of the firm, he can claim it even in the absence of a contract for the payment of the same.

In the given problem, existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners.

Q61

A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is Rs. 350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for Rs. 200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of Rs. 350? Assume there is no contract between the partners regarding the above. [RTP Nov 21]

Discuss the provisions regarding personal profits earned by a partner under the Indian Partnership Act, 1932? [May 19, 2 Marks] CS LLM Arjun Chhabra (Law Maven)

Answer:

Subject to the contract between the partners, -

(a) if a partner derives any profits for himself from

- any transaction of the firm, or
- from the use of the property or
- business connection of the firm or the firm-name,

he shall account for that profit and pay it to the firm;

Example: R and K were Partners in a business as suppliers of leather goods and were regular contractors to Government. K, without knowledge of R, supplied to Government certain leather goods in which Firm was also dealing and made substantial profits. R in entitled to claim profit from K.

(b) if a partner carries on any business of the same nature as and competing with that of the firm,

he shall account for and pay to the firm all profits made by him in that business.

Example: A & B were Partners in a Firm dealing in purchase of cloth. B started cloth-manufacturing business individually. Manufacturing of cloth is a different activity and not similar to sale of cloth and hence sharing of profits by B from manufacturing cloth with A is not covered u/s 16(b).

In the given scenario, Mr. B had sold iron bar to the firm at the current prevailing market rate of Rs.350 per Kg though he had stock with him which he bought for Rs.200 per Kg. Hence, he made an extra profit of Rs. 150 per Kg. This is arising purely out of transactions with the firm. Hence, Mr. B is accountable to the firm for the extra profit earned thereby.

Section 19 (1) - Implied Authority of partner as agent of the firm.

Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

Section 22 - Mode of doing act to bind firm.

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm-name, or in any other manner expressing or implying an intention to bind the firm.

Reading together Sections 19(1) and 22. Implied authority covers those acts of partners which fulfill the following three conditions:

Conditions for Partner's act to bind the Firm i.e. for Implied Authority:

1. Normal Business:
   (a) Act done by Partners must relate to normal business of the Firm.
   (b) If the act is of a nature that is not common in the type of business carried on by Firm, it will not bind the Firm even if it has been done in the Firm's name.
   (c) Example: Z, a Partner of a Firm dealing in readymade garments places an order for liquor worth ₹ 50,000 in the Firm's name. It does not relate to normal business of the Firm. The Firm will not be bound by it as it is not within Z's implied authority.
2. Usual way of carrying on business:
   (a) Act must be done in the usual way of carrying on the Firm's business.
   (b) What is usual and what is unusual in a business depends on (a) nature of business and (b) usage of trade.
   (c) Example: Taking loan is considered as usual activity in case of a trading concern but unusual activity in case of a professional concern of solicitors.
3. In the Firm's name: The Act must be done in Firm's name or should, in some manner, imply an intention to bind the Firm.

Example: A and B are Partners in a stationery business. A buys pencils on credit from a wholesaler in Firm's name but gives them to his children. Taking goods on credit is normal in business, it is within A's implied authority. It will bind the Firm even though A had misappropriated it for his personal use.

Q62

Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs.50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932. [MTP Oct 19, 6 Marks]

Answer:

Implied authority of a partner

Yes, as per sections 19 and 22 of the Indian Partnership Act,1932, every partner has an implied authority to bind every other partner for acts done in the name of the firm, provided the same falls within the ordinary course of business (within the implied authority of firm) and is done in a usual manner. Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner. Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.

Acts outside Implied Authority [Sec. 19(2)]

Related Question:

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do certain acts. State the acts which are beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932? [MTP Aug 18, 6 Marks] [July 21 – 6 Marks] CS LLM Arjun Chhabra (Law Maven)

Answer:

Acts outside Implied Authority [Sec. 19(2)]

In the absence of any usage or custom of trade to the contrary, implied authority of a Partner does not enable him to

(a) Submit to arbitration, a dispute relating to the business of the Firm,

(b) Open a bank account on behalf of the Firm in Partner's own name,

(c) Compromise or relinquish any claim or portion of claim by the Firm,

(d) Withdraw any suit or proceeding filed on behalf of the Firm,

(e) Admit any liability in a suit or proceeding against the Firm,

(f) Acquire immovable property on behalf of the Firm,

(g) Transfer immovable property belonging to the Firm,

(h) Enter into Partnership on behalf of the Firm.

Extension and restriction of partner's implied authority - Section – 20

Section – 20 Extension and restriction of partner's implied authority

(a) The Partners, by mutual agreement, can restrict or extend the Implied Authority of any Partner.

(b) Notwithstanding any restriction, any act done by a Partner on behalf of the Firm which falls within his implied authority, binds the Firm,

- unless the person with whom he is dealing knows of the restriction
- So, a third party is not affected by limitation of implied authority unless he has actual notice of it.

Example: X, Y and Z are partners in a trading firm. They decide that no partner shall have the right to borrow beyond Rs. 20,000 without the consent of other partners. X without consulting Y and Z borrows from W Rs. 25,000 in the name of the firm and utilised the same in paying of the firm's debts. The firm is liable to pay W if W is unaware of the restriction but it will not be liable to pay iMff W was aware of such restriction.

Effect of notice to acting partner – Section 24

Q63

What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932? [May 19, 2 Marks] CS LLM Arjun Chhabra (Law Maven

Answer:

Effect of notice to an acting partner of the firmAccording to Section 24 of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal.

Related/Expected Question: X, Y and Z are Partners of a Trading Firm. X who actively participates in the Management of the business of the Firm, bought certain goods for the Firm. The Seller told X about the defect in the goods, (a) Is the Firm liable to the seller? (b) Would it make any difference if there was a collusion between X and the seller to conceal the defect from other Partners?

Answer:

(a) The Firm is liable to seller because notice to Working Partner operates as a notice to the Firm.

(b) The Firm is not liable to the seller because notice to a Working Partner does not operate as a notice to the Firm incase of fraud committed by a Partner and third party against the Firm.

Liability To Third Parties (Section 25 To 27)

Q64

Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to

third parties as per Indian Partnership Act, 1932. [Jan 21 – 4 Marks]

Related Question: Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932. [Dec 20 – 4 Marks] [RTP May 21]

Answer:

LIABILITY TO THIRD PARTIES (SECTION 25 TO 27)

The question of liability of partners to third parties may be considered under different heads. These are as follows:

1. LIABILITY OF A PARTNER FOR ACTS OF THE FIRM (SECTION 25): Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Example: Certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place. it was held that they were liable for damages arising

out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.

2. LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER (SECTION 26): Were, by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Example: One of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result, thereof, an injury was caused to a workman. The other partner was also held responsible for the same.

3. LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS (SECTION 27):

Where-

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Example : A, B, and C are partners of a place for car parking P stands his car in the parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.

Analysis of section 27:

It may be observed that the workings of the two clauses of Section 27 is designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to the attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.

The firm would be liable in both the cases.

Minors admitted to the benefits of partnership - Section 30

Q65

"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

(I) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner. [Nov 18, 4 Marks]

(II) A. State the liabilities of a minor partner both:

(i) Before attaining majority and

(ii) After attaining majority. [Nov 18, 2 Marks] [MTP March 19, 6 Marks]

OR

B. State the legal position of a minor partner after attaining majority:

(i) When he opts to become a partner of the same firm.

(ii) When he decide not to become a partner. [Nov 18, 2 Marks]

Answer:

(i) Rights which can be enjoyed by a minor partner:

Share of Profits & Property	Inspection and copying of accounts	Filing of suit	Option to become Partner
(a) To share profits, and (b) To share property of the Firm.	(a) To have access to the accounts, and (b) To inspect and copy, any of the Firm's accounts. (c) He cannot inspect books other than account books that may contain confidential	(a) To file a suit for his share of profits of the Firm's property when he is not given his due share. (b) This can be exercised only when he decides to severe his connections with	(a) To opt to become a Partner in the Firm on attaining majority. (b) If he opts to become Partner, he shall be entitled to the same share, which he was getting as a minor.

	information restricted to Partners only.	Firm.	

(ii) Liabilities of a minor partner before attaining majority:

Before attaining majority	Position on attaining majority
(a) Liability is confined only to the extent of his share in profits and property of Firm. (b) He is neither personally liable nor is his private estate liable. (c) He cannot be declared insolvent, but if the Firm is declared insolvent, his share in the Arm vests in the Official Receiver or Official Assignee.	(a) Decision: Within 6 months of his attaining majority or his obtaining knowledge that he had been admitted to the benefits of the Arm, whichever date is later, the minor Partner has to decide whether he shall remain a Partner or leave the Arm. (b) Notice: He shall give a public notice of his intention, i.e. whether opting to become or not becoming a Partner. (c) Deemed Partner: Where he fails to give notice, he becomes a Partner in the Firm on the expiry of such period.

Liabilities of a minor partner after attaining majority:

Elects to become a Partner	Elects NOT to become a Partner
When the Minor becomes a Partner of his own volition or by his failure to give public notice within the specified time - • He becomes personally liable to third parties for all acts of the Firm done since he was admitted to the benefits of the Arm. • His share in the property and profits of the Arm remains the same as he was entitled as a Minor.	• His rights and liabilities continue to be those of a Minor up to the date of giving public notice. • His share is not liable for any acts of the Arm done after the date of the public notice. • He is entitled to sue the Partners for his share of the property and profits in the Firm.

Q66

A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. Explain the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? [RTP May 18] [RTP May 20] CS LLM Arjun Chhabra (Law Maven)

Answer:

Retirement / Death of Partner: Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

(i) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or

(ii) Interest at the rate of 6 per cent annum on the amount of his share in the property.

Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, A shall be entitled, at his option to:

(i) the 20% shares of profits (as per the partnership deed); or

(ii) interest at the rate of 6 per cent per annum on the amount of A's share in the property.

Related Practical Question: Manisha, Madhuri, and Juhi are partners sharing profits and losses equally. Juhi dies on 1st October 2017. After making all the necessary adjustments for assets, liabilities, goodwill and Joint Life Policy, the capital accounts of the partners are ₹100000, ₹140000 and ₹240000 respectively. Manisha and Madhuri decide to continue the business. Juhi's account is not settled until 1st January 2018. The profit for the year is ₹180000. Assume the accounting year ends on 31st March every year. Determine the option that the legal representative of Juhi shall choose.

Answer

Option 1: Share in Subsequent Profits

Profit for the year = 180000

But, profit until 1st October 2017 is already adjusted. Therefore, we need to pay him only the profit from 1st October 2017 to 31st December 2017 i.e. for 3 months. We assume that profits are earned evenly during the year.

Hence, profit for 3 months = 180000 x 3/12

= 45000

Juhi's share=45000×240000/480000 = ₹22500

Option 2: Interest @ 6%

Interest=240000×6100×3/12 = ₹3600

Conclusion: Since, share in subsequent profits is more beneficial, he should go for Option 1.

Rights of outgoing Partner to Carry on competing business – Section 36

Share subsequent profits – Section 37

Related Question:

P.Q.R. and S are the partners in M/S PQRS & Co., a partnership firm which deals in trading of Washing Machines of various brands.

Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:

(i) Rights of P & Q to start a competitive business.

(ii) Rights of P & Q regarding their share in property of M/S PQRS & Co. [Dec 20, 6 Marks]

Answer:

Answer:	Rights of outgoing Partner
To carry on competing business [Section 36]	To share subsequent profits – [Section 37]
1. He may carry on business competing with that of the Firm and may also advertise such business but Subject to a contract to the contrary, he may not (a) use the Firm name or (b) represent himself as carrying on the Firm's business or (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.	1. In the absence of contract to contrary, Outgoin Partner is entitled to such share of profits mad since his cessation, as may be attributable to th use of his share of the Firm's property. 2. Alternatively, he can claim interest at 6% p.a on his share in the Firm's property. 3. This right is available only when the Firr carries on the business with Firm's propert without final settlement of accounts between ther and outgoing Partner.

2. He may sometimes agree with his Partners that on his cessation, he will not carry on a business similar to that of Firm within - (a) a specified period or (b) specified local limits and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.	4. Even the representatives of a deceased Partner can claim share in subsequent profits.
• Outgoing Partner has the right to receive his share of the property of the Firm, including goodwill.	5. When by a contract between Partners, an option to purchase the interest of Outgoing Partner was exercised by other Partners, then, Outgoing Partner will not be entitled to any further share of the profits.

In the instant case

P & Q decided to leave the partnership firm and started competitive business on 31st July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using the property in the name of M/S PQRS & Co. in which P & Q also has a share.

In the light of the above provision and facts of the case

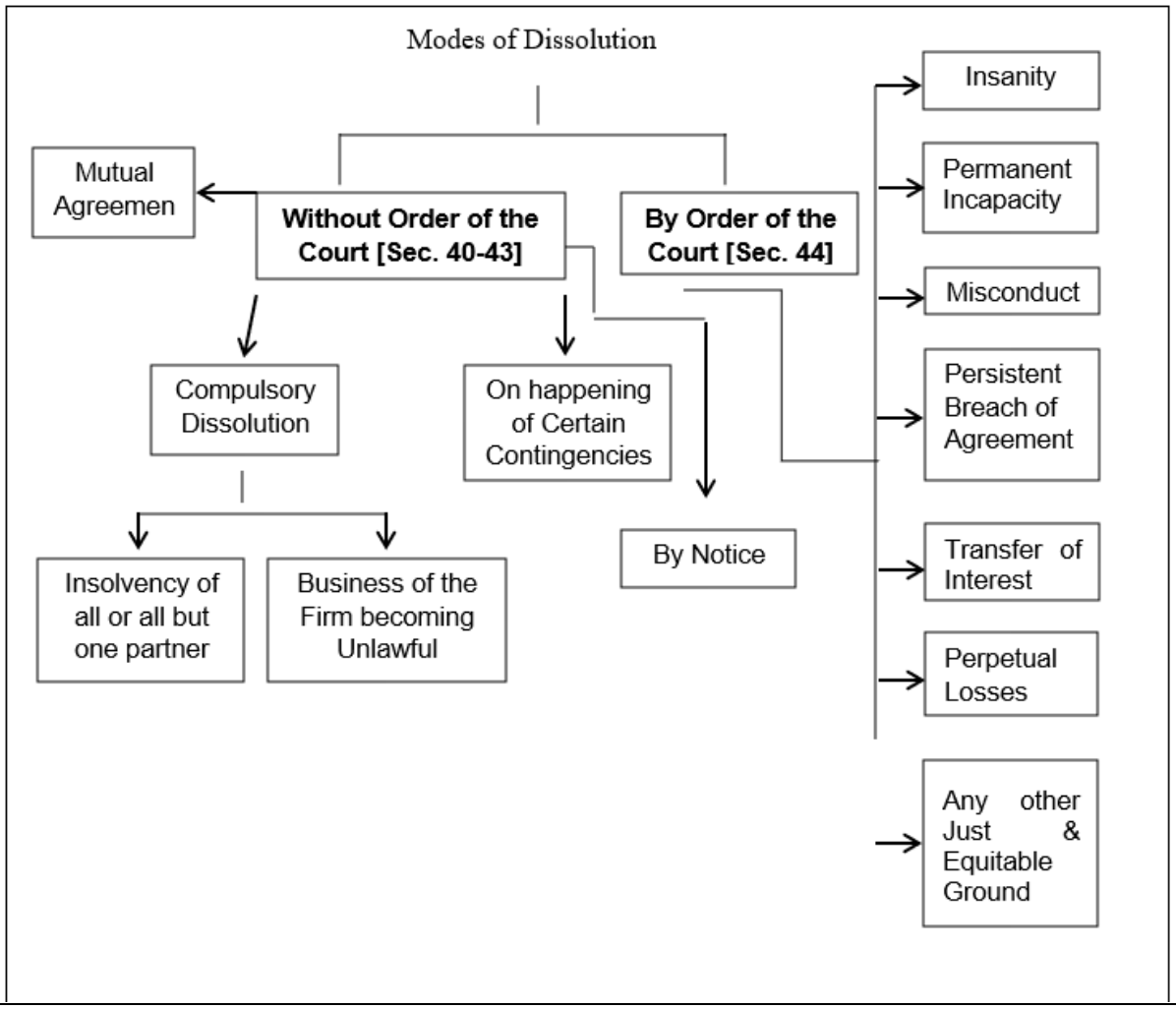
(i) P & Q has the right to start a competitive business but subject to subsection (1) of section 36.

(ii) P & Q shall be is entitled to such share of profits made since their cessation, as may be attributable to the use of their share in the Firm's property or Alternatively, they can claim interest at 6% p.a. on their share in Firm's property.

The Indian Partnership Act, 1932

Unit 3: Registration and Dissolution of a Firm

1. Consequences of non- registration (Section 69)
2. Modes of Dissolution of a firm (Sections 40-44)



Q67

"Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." Explain. Discuss the various disabilities or disadvantages that a non-registered partnership firm can face in brief? [May 19, 4 Marks] [May 18, 4 Marks] [MTP Oct 19, 4 Marks] [Dec-20, 2Marks] CS LLM Arjun Chhabra (Law Maven) [RTP May 21] [MTP Nov 21, 4 Marks] [Nov-22, 6 Marks]

Related Question: What are the consequences of Non-Registration of a Partnership Firm? Discuss. [May 18, 4 Marks] [MTP Oct 19, 4 Marks]

Answer:

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning.

However, under Section 69, non-registration of partnership gives rise to a number of disabilities which are as follows:

I. No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

II. No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than 100 or pursue other proceedings to enforce the rights arising from any contract.

III. Aggrieved partner cannot bring legal action against other partner or the firm: A Partner of an unregistered Firm cannot sue the Firm or any other Partner of the Firm to enforce a right (1) arising from a contract, or (2) conferred by the Partnership Act.

IV. Third party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.

Related Question: What are the rights which won't be affected by Non-Registration of Partnership firm? [Dec-20, 2Marks] [Nov-22, 6 Marks]

Answer:

Non-registration of a firm does not, however effect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value.
5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for account s of the firm or to realise the property of the firm.

Related Question:

A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Decide whether the suit is maintainable. Whether your answer would be same if in 2017 B and C had taken a new partner D and then filed a suit against X without fresh registration? [RTP May 18] CS LLM Arjun Chhabra

Answer:

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

a) the suit must be instituted by or on behalf of the firm which had been registered;

b) the person suing had been shown as partner in the register of firms.

In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms.

It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

Related Question: P & Co. is registered as a partnership firm in 2018 with A, B and P as partners dealing in sale and purchase of motor vehicles. In April 2019, A dies. Now only B and P continue the firm and same business with same firm name P & Co.
In the month of December 2019, firm felt the need of expansion of business and sharing the burden of expenditure and investment. They thought of hiring a new partner with a mutual consent with each other. Hence in December 2019, the firm took a new partner S in the firm P & Co.

The firm has supplied large amount of material to one of the clients Mr. X for business purposes. In spite of regular reminders, X failed to pay the debts due to the firm.

In January 2020, firm filed a case against X in the name and behalf of P & Co. without fresh registration. With reference to Indian Partnership Act, 1932, discuss if the suit filed by the firm is maintainable? [MTP Nov 22 - 6 Marks]

Answer:
In the instant case, since the fresh registration has not been taken after introduction of new partner S, the firm P & Co. will be considered as unregistered firm. Hence the firm which is not registered cannot file a case against the third party. Hence the firm P & Co. cannot sue X.

Related Question: P, X, Y and Z are partners in a registered firm A & Co. X died and P retired. Y and Z filed a suit against W in the name and on behalf of firm without notifying to the Registrar of firms about the changes in the constitution of the firm. Is the suit maintainable? [RTP May 19] – Same answer as Above

Related/Expected Question: A, B and C are Partners of an Unregistered Firm. D owes this Firm. ₹ 1,000 on a contract. The Firm files a suit against D. The suit is dismissed for non-registration of Firm. The Firm is registered later on. Can the Firm now successfully bring the suit against D?

Answer:
Firm must be registered at the time of instituting the suit. Since in the given case, a fresh suit is contemplated and at this time the Firm is a Registered Firm, the Firm will be entitled to institute a valid suit.

Related/Expected Question: A & B purchased a taxi to ply in Partnership. They plied the taxi for a year when A, without the consent of B, disposed of the taxi which brought the Partnership to an

end. B brought an action to recover his share in the sale proceeds. A resisted B's claim on the ground that the Firm was not registered. Will B succeed in his claim?

Answer: Yes

U/s 69, a Partner of an Unregistered Firm cannot enforce any of his contractual or legal rights against any other Partner. But non-registration of a Firm does not affect a Partner's right to seek settlement of accounts of a dissolved Firm.

Related/Expected Question: X, Y and Z are Partners in Unregistered Firm. X steals the property of the Firm. Y filed a suit against X. X registered Y's claim on the plea that the Firm was not registered. Will Y succeed?

Answer:

Sec.69(1) prohibits the institution of civil suit and not criminal suit.

Related Question: M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;

(a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company?

(b) What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm?

(c) What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm?

Answer:

According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

(a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm.

(b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above.

(c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.

Expected case study on registration of firm
A and B were partners in an unregistered firm. A clause in the partnership deed provided that in case of any dispute between the partners, the matter will be referred to arbitration. After some time, a dispute arose between the partners, and A appointed an arbitrator. But B did not give his consent and refused to refer the dispute to the arbitrator. A filed a suit against B that he (B) should be compelled to refer the dispute to the arbitration as there was an arbitration clause in the partnership deed. B contended that the firm was not registered, and, therefore, the suit should be dismissed. It was held that the suit was not maintainable as the firm was unregistered. [Jagdish C. Gupta v. Kajaria Traders]

The Companies Act, 2013 – Complete chapter is important

Some hot topics

1. Corporate veil theory and lifting
2. OPC
3. Pvt co – Max 200 members
4. Small co (Strong possibility)
5. Govt co (Strong possibility)

Q68

There are cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholders or members. Elucidate. [Nov 18, 6 Marks] [June 23, 6 Marks]

Answer:

Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

However, this veil can be lifted which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company, and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

Lifting of Corporate Veil

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- Trading with enemy: If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell
- Where corporate entity is used to evade or circumvent tax, the corporate veil may be lifted
- Where companies form other companies as their subsidiaries to act as their agent
- Company is formed to circumvent welfare of employees

Where the device of incorporation is adopted for some illegal or improper purpose: Where the device of incorporation is adopted for some illegal or improper purpose, *e.g.,* to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

Q69

Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company? [RTP Nov 18] [May 18, 6 Marks] [MTP Oct 19, 6 Marks] [RTP Nov 20] CS LLM Arjun Chhabra

Answer:

One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]: The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the

company.

- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen WHETHER RESIDENT IN INDIA (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) OR OTHERWISE
    - shall be eligible to incorporate a OPC;
    - shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases

Q70

Jagannath Oils Limited is a public company and having 220 members of which 25 members were employee in the company during the period 1st April, 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July, 2007 which were sold by them 1st August, 2016. After some time, on 1st December, 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:

(I) Whether Jagannath Oils Limited is required to reduce the number of members.

(II) Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April, 2006 to 28th June, 2017? [MTP Nov 21 - 4 Marks] [RTP May 22]

Answer:

According to Section 2(68) of Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, —

(a) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company.

(I) Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on which these 25 members were ceased to the employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company.

(II) On the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company.

Q71

Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was Rs. 1.80 crore and paid up share capital was Rs. 80 lakhs. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware Private Limited cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act. **(4 Marks)**

Answer:

As per section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company:

(i) paid-up share capital of which does not exceed four crore rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was to the extent of Rs. 1.80 crore, and paid-up share capital

was Rs. 80 lakhs. Though Glassware Private Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Tycoon Private Limited).

Hence, the contention of the Company Secretary is correct.

Q72

Narendra Motors Limited is a government company. Shah Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of Rs. 100 each. Narendra Motors Limited is holding five lacs five thousand shares in Shah Auto Private Limited. Shah Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Shah Auto Private Limited is government company under the provisions of Companies Act, 2013? [RTP Nov 21] [RTP Dec 23]

Answer: Provision – Section 2(45) & Section 2(87) as given above

By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited.

Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.

The Negotiable Instruments Act, 1881

1. Section 4, 5 & 6
2. "Inland instrument" and "Foreign instrument" [Sections 11 & 12]
3. Inchoate Instrument
4. Legal representative cannot by delivery only negotiate instrument indorsed by deceased. (Section 57)
5. Dishonour of cheques for insufficiency of funds in the accounts (Section 138 to 142)

Q73

X signs instruments in the following terms:

a) I promise to pay B or order Rs. 500.
b) I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received.
c) Mr. B, I O U Rs. 1,000.
d) I promise to pay B Rs. 500 and all other sums which shall be due to him.
e) I promise to pay B Rs. 500, first deducting any money which he may owe me.
f) I promise to pay B Rs. 500 seven days after my marriage with C.
g) I, promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum.
h) I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.

Answer:

Promissory Note [Section 4]: A promissory note is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

The instruments respectively marked (a) and (b) are promissory notes.
The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

Q74

Amit, a resident of Mumbai, borrows ₹50,000 from his friend Rohit in Delhi. As evidence of the loan, Amit issues a promissory note to Rohit, promising to pay back the borrowed amount within 3 months. The promissory note is made payable in USA. Discuss whether Amit's promissory note qualifies as an inland instrument under Section 11 of the Negotiable Instruments Act.

Answer:

"Inland instrument": A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

Inland instrument [Section 11]: Following types of instrument are called inland instrument:

(a) The instrument drawn in India and payable in India.

(b) The instrument drawn in India on resident person whether payable in India or outside India.

(c) The instrument drawn in India upon a person resident outside India but payable in India.

Since a promissory note is not drawn on any person, an inland promissory note is one which is made payable in India.

Amit's promissory note does not qualify as an inland instrument under Section 11 of the Negotiable Instruments Act based on the analysis below:

While Amit (the maker) is a resident of Mumbai, India, and the promissory note is indeed drawn in India, the critical aspect that disqualifies it as an inland instrument is the place of payment. The promissory note is made payable in the USA, not in India.

Q75

'A' signs, a blank cheque and gives it to 'B', and authorizes him to fill it for Rs. 500. 'B' fraudulently fills it up for Rs. 2,000 and endorsed to C, who has in good faith and for value receive it. Advice whether above blank cheque is inchoate instrument?

Answer:

As per **Section 20** of the Negotiable Instrument Act, **1881,** where one person signs and delivers to another a paper stamped in blank or incomplete, he thereby prima facie authorize the holder to complete the negotiable instrument. If no amount is specified, he has authority to fill amount not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument to any holder in due course for such amount.

Section 20 does not apply to cheque as cheque is not required to be stamped.

Therefore, cheque can never become inchoate instrument. Such cheque is not even a negotiable instrument because:

a) A "cheque" is a bill of exchange.
b) It must have express and clear order to pay.
c) Cheque should be drawn on a specified banker.
d) Amount payable should be certain.

Q76

'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorizes him to fill it as note for Rs. 500. 'B' fraudulently fills it up as note for Rs. 2,000, and endorsed to 'C' (B's brother) as gift who received it in good faith. Decide, with reasons whether 'C is entitled to recover the amount and if so, up to what extent?

Answer:

As per **Section 20** of the Negotiable Instrument Act, **1881,** where one person signs and delivers to another a paper stamped in blank or incomplete, he thereby prima facie authorize the holder to complete the negotiable instrument. If no amount is specified, he has authority to fill amount not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument to any holder in due course for such amount.

Example: If stamp paper was sufficient to cover amount of Rs. 10,000 and the amount was left blank while signing, the holder can fill the amount of Rs. 10,000. Such holder (who filled in the blanks) cannot recover amount more than what was intended to be paid to him. However, holder in due course can recover the whole amount from any previous party, including the drawer.

Example: Mayank signs his name on a blank but stamped instrument and gives it to Pratik with authority to fill up as promissory note for Rs. 3,500. However, Pratik fill the amount as Rs. 5,000. The stamp is sufficient to cover Rs. 5,000. Pratik then hands it over Sagar for 15,000 for value. Sagar has no knowledge of the fraud. In such case, Mayank is liable to Sagar for Rs. 5,000 but to Pratik for Rs. 3,500.

However, he is liable to holder (who is not holder in due course) only for the amount actually payable to him. A holder who is not holder in due course is not entitled to recover full amount as shown in the instrument.

Therefore, Mr. c is entitled to recover Rs.500 from Mr. A since:

1. Mr. c received such instrument as gift.
2. Which means Mr. c is holder and not in holder in due course.
3. Because to become holder in due course Mr. c must receive such instrument for consideration or value [Section 9]

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. (Section 57)

Q77

Priyansh purchased some goods from Sumit. He issued a cheque to Sumit for the sale price on 14th June, 2023. Sumit presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instruments Act, 1881. State with reasons, whether this suit is maintainable? **(7 Marks)**

Answer:

By virtue of provisions of Section 138 of the Negotiable Instruments Act, 1881, where cheque was issued by a person to discharge a legally enforceable debt was dishonoured by bank due to insufficiency of funds, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque, or with both.

However,

(a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;

(b) the holder makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the said notice.

In the instant case, Priyansh issued a cheque to Sumit for payment of the price of goods purchased from him. When Sumit presented the cheque in bank, it was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instruments Act, 1881.

For filing the suit under section 138, Sumit should have to make a demand of payment by giving a notice in writing to Priyansh upto 18th July, 2023. In case, Priyansh failed in making the payment within fifteen days of the receipt of the said notice, Sumit could sue under section 138.