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Chapter 1 - Indian Contract Act 1872

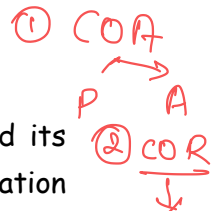
Q1) Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his Acceptance by post. Next day, Ramanathan sends a telegram withdrawing his Acceptance. Examine the Validity of the Acceptance According to the Indian Contract Act, 1872 in the light of the following:

- The telegram of revocation of acceptance was received by Ramaswami before the letter of Acceptance.
- The telegram of revocation and letter of Acceptance both reached together.

Answer -

Provision: Section 4 of Indian Contract Act, 1872

- The problem is related with the communication and time of Acceptance and its revocation. As per **Section 4** of the Indian Contract Act, 1872, the communication of An Acceptance is complete as against the Acceptor when it comes to the knowledge of the proposer.
- The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him to be out of the power of the acceptor.
- The communication of a revocation is complete, as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, to be out of the power of the person who makes it; & as against the person to whom it is made, when it comes to his knowledge.



Facts of Case:

In given case Ramaswami wants to sell his house to Ramanathan and Ramanathan also sent his acceptance by post. But afterwards the next day Ramanathan changed his mind and sends a telegram for withdrawing his acceptance.

Conclusion:

contract (X)

1. Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
2. If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

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Q2) A shopkeeper displayed a pair of dress in the showroom and a price tag of 2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shopkeeper to receive the payment and pack up the dress. The shopkeeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the Ms. Lovely seeks your advice whether she can sue the shopkeeper for the above cause under the Indian Contract Act, 1872. (IMP)

Ans -

Provision: [Indian Contract Act, 1872]

1. The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract.
2. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer.
3. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

Facts of case:

In above case Ms. Lovely looked at a price tag of 2000 for a pair of dress after a shop. She rushed to shop-keeper for purchase the same, but the shopkeeper refused to hand over the dress to Ms. Lovely

Conclusion:

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract.

In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. If the shopkeeper does not accept the price, the interested buyer cannot compel him to sell.

Q3) Mr. Y is a devotee and wants to donate an elephant to the temple as a core part of ritual worship. He contacted Mr. X who wanted to sell his elephant. Mr. X contracted with Mr. Y to sell his elephant for ` 20 Lakhs. Both were unaware that the elephant was dead a day before the agreement. Referring to the provisions of the Indian Contract Act, 1872, explain whether it is a void, voidable or a valid contract. (IMP)

Ans -

As per Section 2(j) of the Indian Contract Act, 1872 a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

The fact of impossibility may be known or unknown to the promisor or promisee. It may be added by clarification here that the term "contract" shall be understood as an "agreement".

Thus, when the parties agree on doing something which is obviously impossible in itself the agreement would be void. In this case, Mr. X and Mr. Y were ignorant of the fact that the elephant was dead and therefore the performance of the contract was impossible from the very start (impossibility ab initio). Hence, this contract is void being not enforceable by law.

Q4) 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? (IMP)

Answer -

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.

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. 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.

Q4) Mr. B makes a proposal to Mr. S by post to sell his house for Rs. 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020. - COO COA → P

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

Examine with reference to the Indian Contract Act, 1872:

1. On which date, the offer made by Mr. B will complete?
2. Discuss the validity of acceptance.

What would be validity of acceptance if letter of revocation and letter of acceptance reached together?

Answer

Provision :

- 31A
1. According to Section 4 of the Indian Contract Act, 1872, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made".

When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made. Further, mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

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

2. When communication of acceptance is complete: Where a proposal is accepted by a letter sent by the post, in terms of Section 4 of the Act, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer. **Revocation of Acceptance:** The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offer or, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

In the given question, when Mr. S accepts Mr. B's proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020. Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

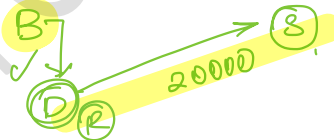
The telegram for revocation of acceptance reached Mr. B on 19th April 2020 i.e. before the letter of acceptance of offer (20th April 2020).

Hence, the revocation is absolute. Therefore, acceptance to an offer is invalid.

3. It will not make any difference even if the telegram of revocation and letter of acceptance would have reached on the same day, i.e. the revocation then also would have been absolute. As per law, acceptance can be revoked anytime before the communication of acceptance is complete. Since revocation was made before the communication of acceptance was complete and communication can be considered as complete only when the letter of acceptance reaches the proposer i.e. Mr. B.

Q5) Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of Rs 20,000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant. On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid? (IMP)

Ans -



cf. Chinnaya vs Ramnaya

Provision: [Section 2(d) of Indian Contract Act, 1872]

1. The definition of consideration as given in section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration.
2. **Consideration can be offered by the promisee or a third-party only at the request or desire of the promisor.** If an action is initiated at the desire of the third-party, it is not a consideration.
3. If you look at the definition of consideration according to section 2 (d) of the Indian Contract Act. 1872, it explicitly states the phrase 'promisee or any other person...' This essentially means that in India, consideration may move

from the promise to any other person. However, it is important to note that there can be a stranger to consideration but not a stranger to the contract.

Facts of Case:

In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant.

Further, the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously, therefore they should be regarded as one transaction, and there was sufficient consideration for it.

Conclusion:

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.

Q6) Mr. Ramesh promised to pay ₹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. (IMP)

Ans-

Provision: [Indian Contract Act, 1872]

1. Intention to create legal relations is part of elements in contract. Intention to create legal relations is defined as an intention to enter a legally binding agreement or contract. Intention to create legal relations is one of the necessary elements in formation of a contract.
2. In addition, with no intention to create legal relations, it will make any contract to become a mere promise. Mere promises simply like a simple promise arise when there is no intention to create legal relation

3. There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.
4. Domestic and social agreements of intention to create legal relations can be broken down into three groups, which are firstly commercial, or business relations, secondly social friend's relations and thirdly family or domestic relations.

Facts of case:

In above case Mr. Ramesh promised his wife to pay Rs.50,000. So, Mrs. Lali can spend this on her birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh did same and written agreement was registered under law but he fails to pay specified amount and Mrs. Lali wants to file a suit against Mr. Ramesh.

Conclusion:

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

(IGSIR's Note - Exceptions of No consideration No Contract - can also be answer which will make contract valid)

Q7) X agreed to become an assistant for 2 years to 'Y' who was practicing Chartered Accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a Chartered Accountant on his own account within 20 kms of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so? (IMP)

Ans -



Provision - **As per sec 27 - Agreement in restraint of trade is void**

1. An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.
2. **Exception** - an agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

Facts of Case:

1. An agreement made between X & Y in which X will work as assistant to Y who is Chartered Accountant at Jodhpur for 2 years and agreed not to work / practice as a chartered accountant on his own account within 20 kms of the office of Y at jodhpur.
2. At the end of one year X left the assistantship and started practice on his own account within the said area of 20 kms

Conclusion:

Therefore, referring to above provisions and facts 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.

Q8) Explain the concept of 'misrepresentation' in matters of contract. 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 whether Suraj can rescind the contract? (IMP)

Answer: -

Provision: [Section 18 & 19 Indian Contract Act, 1872]

1. According to Section 18 of the Indian Contract Act, 1872, misrepresentation is:
 - a. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.

- b. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
- c. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing, which is the subject of the agreement.

2. The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract. 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.

Conclusion:

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

Q9) 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 ₹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.

(IMP)

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.

Q10) Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was ₹ 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of ₹ 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?

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.

Q11) Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of ₹40,000. He was very happy to get ₹ 40,000 and quickly went to the market and purchased a laptop worth ₹30,000. He happily spent the rest of the amount with his friends on a pleasure trip.

Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872?

Answer -

As per **Section 11** of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is **void-ab-initio** means void from the very beginning.

When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement.

However, if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained.

Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same. Hence, in the present case, Rahul is not liable to repay ₹ 40,000 that he has borrowed from the shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.

Q12) Sahil sells by auction to Rohan a horse which Sahil knows to be unsound. The horse appears to be sound, but Sahil knows about the unsoundness of the horse. Is this contract valid in the following circumstances under the Indian Contract Act, 1872:

1. If Sahil says nothing about the unsoundness of the horse to Rohan. (FX)
2. If Sahil says nothing about it to Rohan who is Sahil's son. (FR) (FV)
3. If Rohan says to Sahil "If you do not deny it, I shall assume that the horse is sound." Sahil says nothing. (S = S)

Answer

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

1. 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. (FX)
2. This contract is not valid since as per section 17, it becomes Sahil's duty to tell Rohan about the unsoundness of the horse because a fiduciary relationship exists between Sahil and his son Rohan. Here, Sahil's silence is equivalent to speech and hence amounts to fraud. (FV)
3. This contract is not valid since as per section 17, Sahil's silence is equivalent to speech and hence amounts to fraud. (FV)

Q13) Kashish was running a business of artificial jewellery since long. He sold his business to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area for a period of next one year. After two months, Kashish opened a show room for real diamond jewellery. Naman filed a suit against Kashish for closing the business of real diamond jewellery business as it was against the agreement. Whether Kashish is liable to close his business of real diamond jewellery following the provisions of Indian Contract Act, 1872? (IMP) (Any where in India)

Answer

According to **Section 27** of Indian Contract Act, 1872, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But this rule is subject to the following exceptions, namely, where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid.

The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

In the instant case, Kashish sold his running business of artificial jewellery to Naman and promises, not to carry on the business of artificial jewellery and real diamond jewellery in that area and for a period of next one year but just after two months, Kashish opened a show room of real diamond jewellery. Naman sued Kashish for closing the business of real diamond business as it was against the agreement.

As exceptions to section 27 is applicable to similar business only, agreement between Naman and Kashish will not be applicable on business of real diamond jewellery.

Hence, Kashish can continue his business of real diamond jewellery.

Artificial ✖

Q14) 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?

Answers

Section 17 of Indian Contract Act, 1872 defines 'Fraud'. According to section, "Fraud" means and includes any of the following acts committed by a party to a

contract or by his agent with intent to deceive or to induce a person to enter into the contract:

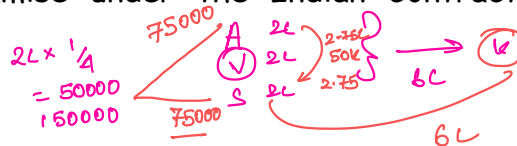
1. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. the active concealment of a fact by one having knowledge or belief of the fact;
3. a promise made without any intention of performing it;
4. any other act fitted to deceive;
5. any such act or omission as the law specially declares to be fraudulent.

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.

Q15) Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay ₹6,00,000 to Kartik. Over a period, Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise under the Indian Contract Act, 1872. (IMP)

Answer: -



Provision: [Section 43 Indian Contract Act, 1872]

1. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any 1[one or more] of such joint promisors to perform the whole of the promise.
2. Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract

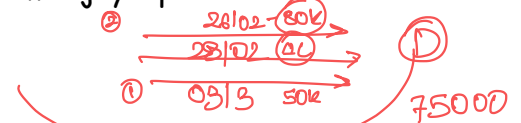
- ✓ 3. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Facts of Case:

1. Ajay, Vijay, and Sanjay were partners of a software business. They jointly promise to pay 6, 00,000 to Kartik.
2. Afterwards Vijay became insolvent and can only pay one-fourth of his debts and due to which Sanjay is compelled to pay the whole amount to Kartik.

Conclusion:

Therefore, by considering the above provisions and facts of the case here Sanjay paid the whole amount ₹6,00,000 to Kartik. He will receive ₹50,000 from Vijay (1/4th of ₹2,00,000) and ₹2,75,000 from Ajay (₹2,00,000 of his part of debt and ₹75,000 of the debt of ₹1,50,000 from Vijay's part which shall be paid by Sanjay & Ajay due to insolvency of Vijay.)



Q16) Mr. Sonumal a wealthy individual provided a loan of ₹80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of ₹1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided ₹1,00,000 on 28.02.2019 and remaining ₹50,000 on 03.03.2019.

On 10.03.2019 Mr. Datumal while paying off part ₹75,000 to Mr. Sonumal insisted that the lender should adjusted ₹50,000 towards the loan taken on-03.03.2019 and balance as against the loan on 26.02.2019.

Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.

Now you decide:

1. Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?
2. What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
3. What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

(IMP)

Answer: -

Provision: [Indian Contract Act, 1872]

1. In case where a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e., adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.
2. As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.
3. As per the provisions of 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits.
4. As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits.
5. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

Conclusion:

1. Therefore, the contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.
2. Hence in case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.

3. Hence in case where neither Mr. Datamal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts

Q17) Mr. Singhanian entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhanian promised to pay ` 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. Singhanian terminated the contract. State in the light of provisions of the Indian Contract Act, 1872: -

- Can Mr. Singhanian terminate the contract with Mr. Sonu?
- What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhanian allows him to perform without saying anything?
- What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhanian allows him to perform without saying anything? (IMP)

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,

- As Mr. Sonu could not perform as per the contract, Mr. Singhanian can repudiate the contract.
- In the second situation, as Mr. Singhanian allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhanian had given his assent to continue the contract. Mr. Singhanian cannot terminate the contract however he can claim damages from Mr. Sonu.

- c) In case Mr. Singhanian allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhanian had given his assent for performance

by third party. Now Mr. Singhania cannot terminate the contract nor can claim any damages from Mr. Sonu.

Q18) "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.

Answer: -

Provision: [Section 40 of Indian Contract Act, 1872]

1. 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.
2. Section 39 of the Indian Contract Act, 1872 deals with anticipatory breach of contract and provides that, "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."
3. Effect of anticipatory breach: The promisee is excused from performance or from further performance. Further he gets an option:
 - a) 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
 - b) 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.
 - c) 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 take advantage of any supervening impossibility, which may have the effect of discharging the contract.

→ Damages (X)

Q18) What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises?

Answer: -

Provision: [Indian Contract Act, 1872]

1. Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e., as much as the party doing the service has deserved.
2. It covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done.
3. For the application of this doctrine, two conditions must be fulfilled ed:
 - a) It is only available if the original contract has been discharged.
 - b) The claim must be brought by a party not in default.
4. The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum meruit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.
5. The claim for quantum meruit arises in the following cases:
 - when an agreement is discovered to be void or when a contract becomes void.
 - When something is done without any intention to do so gratuitously.
 - Where there is an express or implied contract to render services but there is no agreement as to remuneration.
 - When one party abandons or refuses to perform the contract.
 - Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.

- When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

Q20) Mr. Chetan was travelling to Manali with his wife by bus of Himalayan Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid-way in cold night. The driver advised the passengers to get to the shelter in the nearest hotel which was at a distance of only one kilometer from that place. The wife of Mr. Chetan caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Chetan would get compensation for which he filed the suit under the Indian Contract Act, 1872? (IMP)

Answer

Section 73 of Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the instant case, Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

On the basis of above provisions and facts of the case, it can be said that Mr. Chetan can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

Q21)) Explain the-term 'Quasi Contracts' and state their characteristics.
(IMP)

Answer: -

Provision: [Indian Contract Act, 1872]

1. Under certain special circumstances obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi-contracts'.
2. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another.
3. The salient features of a quasi-contract are:
 - a) It does not arise from any agreement of the parties concerned but is imposed by law.
 - b) Duty and not promise is the basis of such contract.
 - c) The right under it is always a right to money and generally though not always to a liquidated sum of money.
 - d) Such a right is available against specific person(s) and not against the whole world.

A suit for its breach may be filed in the same way as in case of a complete contract

Q22) P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D?

Answer -

Section 69 of the Indian Contract Act, 1872 states that a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, reimbursed by the other.

In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his carriage was seized by him. Hence being an interested party, P made the payment and can recover the same from D.

Q23) 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 necessities 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 necessities to Mr. Y for four years, Mr. M approached the former asking him to payback ` 15 Lakhs inclusive of ` 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 ` 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?
- (iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother? (IMP)

Answer -

- (i) Claim for necessities 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 necessities 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 necessities 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 ` 15 Lakhs and this amount can be recovered

from Mr. Y's parent's jewellery amounting to ` 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

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

Q24) Surendra' guarantees 'Virendra' for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March, 2021. 'Virendra' supplied goods of Rs.30,000 on 01.03.2021 and of Rs.20,000 on 03.03.2021 to 'Jitendra'. On 05.03.2021, 'Surendra' died in a road accident. On 10.03.2021, being ignorant of the death of 'Surendra', 'Virendra' further supplied goods of Rs. 40,000. On default in payment by 'Jitendra' on due date, 'Virendra' sued on legal heirs of 'Surendra' for recovery of Rs. 90,000. Describe, whether legal heirs of 'Surendra' are liable to pay Rs.90,000 under the provisions of Indian Contract Act 1872.

What would be your answer, if the estate of 'Surendra' is worth of Rs. 45,000 only?

Ans

According to section 131 of Indian Contract Act 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'Surendra' was surety for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March'2021. 'Virendra' supplied goods of Rs.30,000, Rs.20,000 and of Rs.40,000 on 01.03.2021, 03.03.2021 and 10.03.02021 respectively.

'Surendra' died in a road accident but this was not in the knowledge of 'Virendra'. When 'Jitendra' defaulted in payment, 'Virendra' filed suit against legal heirs of 'Surendra' for recovery of full amount i.e. Rs.90,000.

On the basis of above, it can be said in case of death of surety ('Surendra'), his legal heirs are liable only for those transactions which were entered before 05.03.2021 i.e. for Rs.50,000. They are not liable for the transaction done on 10.03.2021 even though Virendra had no knowledge of death of Surendra.

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

Q25) Mr. Chintu was appointed as Site Manager of ABC Constructions Company on a two years contract at a monthly salary of Rs. 50,000. Mr. Ganesh gave a surety in respect of Mr. Chintu's conduct. After six months the company was not in position to pay Rs. 50,000 to Mr. Chintu because of financial constraints. Chintu agreed for a lower salary of Rs. 30,000 from the company. This was not communicated to Mr. Ganesh. Three months afterwards it was discovered that Chintu had been doing fraud since the time of his appointment. What is the liability of Mr. Ganesh during the whole duration of Chintu's Appointment.

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

Hence, Mr. Ganesh, will be liable as a surety for the act of Mr. Chintu 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. Ganesh, will discharge Mr. Ganesh from all the liabilities towards the act of the Mr. Chintu after such variation.

Q26) 'C' advances to 'B', Rs. 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth Rs. 2,00,000 without knowledge of 'A'. C cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth Rs.80,000, under the Indian Contract Act, 1872.

Answer:

Surety's right to benefit of creditor's securities:

According to **section 141** of the Indian Contract Act, 1872, a surety is entitled to the **benefit of every security which the creditor has against the principal debtor** at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, **if the creditor loses, or, without the consent of the surety, parts with such security**, the surety is discharged to the **extent of the value of the security**. → 80K

In the instant case, C advances to B, Rs. 2,00,000 rupees on the guarantee of A. C has also taken a further security for Rs. 2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. Rs. 80,000 and will remain liable for balance Rs. 1,20,000.

Q27) Rahul is the owner of electronics shop. Priyanka reached the shop to purchase an air conditioner whose compressor should be of **copper**. As Priyanka wanted to purchase the air conditioner on credit, Rahul demand a guarantor for such transaction. **Mr. Arvind** (a friend of Priyanka) **came forward and gave the guarantee for payment of air conditioner**. Rahul sold the air conditioner of a particular brand, misrepresenting that it is made of **copper** while it is made of **aluminium**. Neither Priyanka nor Mr. Arvind had the knowledge of fact that it is made of aluminium. On being aware of the facts, **Priyanka denied for payment of price**. **Rahul filed the suit against Mr. Arvind**. Explain with reference to the Indian

Contract Act 1872, whether Mr. Arvind is liable to pay the price of air conditioner?

Answer:

As per the provisions of section 142 of the Indian Contract Act 1872, where the guarantee has been obtained by means of misrepresentation made by the creditor concerning a material part of the transaction, the surety will be discharged. Further according to provisions of section 134, 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 question, Priyanka wants to purchase air conditioner whose compressor should be of copper, on credit from Rahul. Mr. Arvind has given the guarantee for payment of price. Rahul sold the air conditioner of a particular brand on misrepresenting that it is made of copper while it is made of aluminium of which both Priyanka & Mr. Arvind were unaware. After being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind for payment of price.

On the basis of above provisions and facts of the case, as guarantee was obtained by Rahul by misrepresentation of the facts, Mr. Arvind will not be liable. He will be discharged from liability.

Q28) Mrs. A delivered her old silver jewelry to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

Answer:

Section 148 of Indian Contract Act 1872 defines 'Bailment' as 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 direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Y's shop, when Mrs. A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

Q29) Amit lends a horse to Bimal for his own riding only. However, Bimal allows Chinku, a member of his family to ride the horse. Chinku rides the horse with care, but the horse falls and is injured. As per the provisions of the Indian Contract Act, 1872, analyse the liability of Bimal in the given situation.

Answer:

According to section 154 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Hence, Bimal is liable to make compensation to Amit for the injury done to the horse.

Q30) Amar bailed 50 kg of high-quality sugar to Srijith, who owned a kirana shop, promising to give Rs.200 at the time of taking back the bailed goods. Srijith's

employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away.

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

According to Section 157 of the Indian Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

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

Q31) Mr. Dhannaseth delivers a rough blue sapphire to a jeweler, to be cut and polished. The jeweler carries out the job accordingly. However, now Mr. Dhannaseth refuses to make the payment and wants his blue sapphire back. The jeweler denies the delivery of goods without payment. Examine.

Answer:

According to section 170 of the Indian Contract Act, 1872, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Thus, in accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor

refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the right to sue.

Where the bailee delivers the goods without receiving his remuneration, he has a right to sue the bailor. In such a case the particular lien may be waived. The particular lien is also lost if the bailee does not complete the work within the time agreed.

Hence, in the given situation the jeweler is entitled to retain the stone till he is paid for the services he has rendered.

Q32) Prisha acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Prisha pledged the diamond with Mr. Vikas. Is this a valid pledge under the Indian Contract Act, 1872?

Answer: -

According to section 178A of the Indian Contract Act, 1872, when the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Therefore, the pledge of diamond by Prisha with Mr. Vikas is valid.

Q33) A appoints M, a minor, as his agent to sell his watch for cash at a price not less than Rs. 700. M sells it to D for Rs. 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

Answer:

According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent.

Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Q34) Mr. Yadav, a cargo owner, chartered a vessel to carry a cargo of wheat from a foreign port to Chennai. The vessel got stranded on a reef in the sea 300 miles from the destination.

The ship's managing agents signed a salvage agreement for Mr. Yadav. The goods (wheat) being perishable, the salvors stored it at their own expense. Salvors intimated the whole incident to the cargo owner. Mr. Yadav refuse to reimburse the Salvor, as it is the Ship- owner, being the bailee of the cargo, who was liable to reimburse the salvor until the contract remained untermiated.

Referring to the provision of The Indian Contract Act 1872, do you acknowledge or decline the act of Salvor, as an agent of necessity, for Mr. Yadav. Explain?

Answer:

Section 189 of Indian Contract Act 1872 defines agent's authority in an emergency. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity.

Hence, in the above case the Salvor had implied authority from the cargo owner to take care of the cargo. They acted as agents of necessity on behalf of the cargo owner. Cargo owner were duty-bound towards salvor. Salvor is entitled to recover the agreed sum from Mr. Yadav and not from the ship owner, as a lien on the goods.

Q35) Mr. Bhalla instructs Aman, a merchant, to buy a ship for him. Aman employs a ship surveyor of good reputation to choose a ship for Mr. Bhalla. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bhalla holds Aman responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Aman is responsible to Mr. Bhalla.

Answer:

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Aman is not, but the surveyor is, responsible to Mr. Bhalla.

Q36) Mr. Navin owns a big car and has leased his car to Mrs. Susie. The lease agreement is terminable on three months' notice. Mr. Bhalla, not being authorised by Mr. Navin, demands on behalf of Mr. Navin, the delivery of the car and gives a notice of termination of lease agreement to Mrs. Susie who was in possession of the car at that time. Examine whether Mr. Navin can ratify the notice sent by Mr. Bhalla. Give your answer as per the provisions of the Contract Act, 1872.

Answer:

According to section 200 of the Indian Contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

Thus, in the instant case the notice cannot be ratified by Navin, so as to be binding on Susie.

Q37) Bhupendra borrowed a sum of Rs. 3 lacs from Atul. Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterward, Bhupendra revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhupendra is lawful.

Answer:

According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

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

Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favour of Atul and the said agency is not revocable. The revocation of agency by Bhupendra is not lawful.

Q38) An agent is neither personally liable nor can he personally enforce the contract on behalf of the principal." Comment.

Answer:

According to section 230 of the Indian Contract Act, 1872, in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Thus,

an agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

Presumption of contract to the contrary: But such a contract shall be presumed to exist in the following cases:

- (i) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal
- (ii) Where the agent does not disclose the name of his principal or undisclosed principal; and
- (iii) Where the principal, though disclosed, cannot be sued.

Q39) X has made an agency agreement with Y to authorize him to purchase goods on the behalf of X for the year 2020 only. The agency agreement was signed by both and it contains all the terms and conditions for the agent. It has a condition that Y is allowed to purchase goods maximum upto the value of Rs. 10 lakhs only. In the month of April 2020, Y has purchased a single item of Rs. 12 lakhs from Z as an agent of X. The market value of the item purchased was Rs. 14 lakhs but a discount of Rs. 2 lakhs was given by Z. The agent Y Y has purchased this item due to heavy discount offered and the financially benefit to X.

After delivery of the item Z has demanded the payment from X as Y is the agent of X. But X denied to make the payment stating that Y has exceeded his authority as an agent therefore he is not liable for this purchase. Z has filed a suit against X for payment.

Decide whether Z will succeed in his suit against X for recovery of payment as per provisions of The Indian Contract Act, 1872.

Answer:

An agent does all acts on behalf of the principal but incurs no personal liability. The liability remains that of the principal unless there is a contract to the contrary. An agent also cannot personally enforce contracts entered into by him on behalf of the principal. In the light of section 226 of the Indian Contract Act, 1872, Principal is considered to be liable for the acts of agents which are within the scope of his authority.

Further section 228 of the Indian Contract Act, 1872 states that where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

In the given case, the agency agreement was signed between X and Y, authorizing Y to purchase goods maximum upto the value of Rs. 10 lakh. But Y purchased a single item of Rs. 12 lakh from Z as an agent of X at a discounted rate to financially benefit to X. On demand of payment by Z, X denied saying that Y has exceeded his authority therefore he is not liable for such purchase. Z filed a suit against X for payment.

As said above, liability remains that of the principal unless there is a contract to the contrary. The agency agreement clearly specifies the scope of authority of Y for the purchase of goods, however he exceeded his authority as an agent. Therefore, in the light of section 228 as stated above, since the transaction is not separable, X is not bound to recognize the transaction entered between Z and Y, and therefore may repudiate the whole transaction. Hence, Z will not succeed in his suit against X for recovery of payment.

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Q40) Aarthi is the wife of Naresh. She purchased some sarees on credit from M/s Rainbow Silks, Jaipur. M/s Rainbow Silks, Jaipur demanded the amount from Naresh. Naresh refused. M/s Rainbow Silks, Jaipur filed a suit against Naresh for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether M/s Rainbow Silks, Jaipur would succeed?

Answer:

The situation asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessities. But the legal presumption can be rebutted in the following cases:

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

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessities. This legal presumption can be rebutted only in cases (iii) and (iv) above.

Applying the above conditions in the given case M/s Rainbow Silks will succeed. It can recover the said amount from Naresh if sarees purchased by Aarthi are necessities for her.