INDIAN CONTRACT ACT – PRACTICAL QUESTIONS & ANSWERS

1. (a) *Examine with reference to relevant case-law as to when acceptance need not be communicated.*
(b) *State whether the following contracts can be enforced.*
(i) *Where there is a family settlement in writing and a family member who is not a party to the settlement wishes to enforce his claim*
(ii) *Where an orphanage wishes to enforce a promise made by a philanthropist to donate a specified sum.*
(iii) *An agreement to create an agency, in which consideration is absent.*

SOLUTION

(a) In general, acceptance of the offer must be communicated to the offeror. Even when performance of an act constitutes acceptance of an offer, the performance of that act must be communicated, which will be equivalent to communication of acceptance. But in cases, where the offer includes a term that a mere performance will constitute acceptance, the performance suffices as communication of acceptance. The position was clearly explained in the famous case of *Carlill Vs Carbolic & Smokeball Co*. In this case, the defendant, a sole proprietary concern manufacturing a medicine which was a carbolic ball whose smoke could be inhaled through the nose to cure influenza, cold and other connected ailments issued an advertisement for sale of this medicine. The advertisement also included a reward of £100 to any person who contracted influenza, after using the medicine (which was described as 'carbolic smoke ball'). Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza. It was held that Mrs. Carlill was entitled to a reward of £100 as she had performed the condition for acceptance. Further as the advertisement did not require any communication of compliance of the condition, it was not necessary to communicate the same. The court thus in the process laid down the following three important principles:

(i) an offer, to be capable of acceptance, must contain a definite promise by the offeror that he would be bound provided the terms specified by him are accepted;

(ii) an offer may be made either to a particular person or to the public at large and;

(iii) if an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer.

(b) (i) As per the judgment in *Shuppu Vs Subramanian 33 Mad. 238*, a family settlement in writing, may be enforced by a member of the family who was not a party to the settlement.

(ii) A gratuitous promise such as a promise to donate money lacks consideration and cannot be enforced.

(iii) According to Section 185, of the Indian Contract Act, 1872 an agreement creating an agency though devoid of consideration, is valid and can be enforced.

2. (a) *Examine the difference between succession and assignment.*

(b) (i) *In what kind of contracts, time is of essence?*

(ii) *Briefly explain the positions of sub-agent and substituted agent under the law of agency.*

<u>SOLUTION:</u>

When succession occurs by a process of law, both the burden and the benefit would some times devolve on the legal heir. For example, 'B' is the son of 'A' the father. Upon A's death 'B' will inherit all the assets and liabilities of 'A' [These assets and liabilities are also referred to as debts and estates]. Thus 'B' will be liable to all the debts of 'A', but if the liabilities inherited are more than the value of the estate [Assets] inherited it will be possible to pay only to the extent of assets inherited. In the concept of "assignment", unlike succession, the assignor can assign only the assets to the assignee and not the liabilities. Because when a liability is assigned, a third party gets involved in it. The debtor cannot through assignment relieve himself of his liability to his creditor. There cannot be any assignment of benefit of a contract coupled with a liability, unless the assignees consent has been sought or when a personal consideration has entered into making of the contract then the contract cannot be assigned. In *Zaffer Mehar Ali Vs Budge Budge Jute Mills Company Ltd. 33 Cal*. 'A' agreed to sell certain gunny bags to 'B' which were to be delivered in monthly installments for a period of 6 months and the contract contained certain options for the buyer as regards quality and packing. It was held that the clause relating to the buyer's option did not preclude the assignment of the contract.

(b) (i) Ordinarily from a plain examination of a contract it would be difficult to ascertain from the terms of the contract whether time is of essence of the contract. A promisee may have failed to perform his contract within the specified time. Yet the time may not be treated as essence of the contract in that case. Whether time is of essence of a contract has to be decided from the terms of the contract. In mercantile contracts, as business world is ruled by 'time', and 'money' any stipulation as to 'time' and 'money are essential conditions.

The general principles that are followed can be enunciated as under.

(i) In transactions relating to sale of gold, silver, blue chip shares, time of delivery is of essence. Here time will be treated as essence of contract.

(ii) In transactions involving sale of land, redemption of mortgages, though certain time frame is fixed, any delay is not considered seriously provided justice can be done to parties. Of course even in sale of land, time can be made essence of contract by express words.

(ii) Sub-Agent : Sub agency occurs when an agent appoints another agent. The appointment of sub agent is not lawful, because the agent is a delegate and a delegate cannot further delegate. This is based on the Latin principle "***delegata potestas non potest delegari***".

The appointment of a sub-agent would be valid, if the terms of appointment originally contemplated it. Sometimes customs of trade may provide for appointment of sub agents. In both these cases the sub-agent would be treated as the agent of the principal. Position of sub-agent vis a vis third parties where the sub-agent is properly appointed:

(a) Where the sub-agent is property appointed : Where a sub agent is properly appointed, the principal is bound by his acts and is therefore responsible to third parties as if he were an agent originally appointed by the principal.

(b) In the case of appointment without authority : In case where the appointment of sub-agent takes place without authority, the principal is not bound by the acts of sub-agent and sub-agent is not bound to the principal. It is the agent who is the principal of sub agent. Where the subagent purportedly acts in the name of first principal, the first principal may ratify the act of sub-agent. However if the sub-agent acts in his own name or in the name of the agent who has without authority delegated to the sub-agent the business which is in fact that of the principal, the principal cannot ratify such acts of sub-agent.

Substituted Agent : Substituted agents are not sub-agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, than the second person is not to be treated as a sub-agent but only as an agent of the original principal. For example, 'A' directs 'B' his solicitor to sell his property by auction and 'B' appoints 'C' an auctioneer. In this regard, 'C' is an agent of 'A' and not a subagent. While selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence would and if he does so he will not be responsible for acts or negligence of the substituted agent. For example, 'X' consigns goods to 'Y' a merchant for sale. 'Y in due course employs an auctioneer in goods to sell goods of 'X' and also allows him to receive the proceeds of sale. The auctioneer becomes insolvent afterwards without handing over the proceeds. Here 'Y' will not be responsible to 'X' as he has discharged his duties as a man of ordinary prudence and diligence.

3. (a) *Vijay gifted the whole of his property to his daughter on the condition that she should pay Rs.200 per month to her uncle (father's brother). Later, she refused to pay her uncle on the ground that she did not receive any consideration from her uncle. Is she justified?*

(b) *Mr. Vipin is a professional dancer. Mr. Pandey engages him to dance at a party he is giving for his business associates. But a day prior to the party Mr. Vipin's son passes away and he could not perform the dance recital. In case Mr. Pandey sues Mr. Vipin, do the latter have any protection under the law?*

SOLUTION:

(a) That consideration can legitimately move from a third party is an accepted principle of law in India though not in England. In *Chinaya vs. Ramaya (1881) A.Mad. 13.7., a mother*, 'A' had made over certain property to her daughter with condition that the former's brother should be paid annuity by the latter. The latter (i.e. the daughter) the same day executed the document agreeing to pay annuity accordingly but declined to pay after sometime. A's brother sued A's daughter. It was contended on behalf of A's daughter, that there was no consideration from A's brother and hence there was no valid contract. This plea was rejected on the ground that the consideration did flow from mother to daughter and such consideration from third party is sufficient to enforce the promise of daughter of 'A' to pay annuity to A's brother. In the given case if Vijay's daughter had made a promise to her uncle then she would be bound by the promise.

(b) When performance of a promise becomes impossible on account of subsequent developments of events or changes in circumstances, which are beyond the contemplation of parties, the contract becomes void. Such supervening impossibility can arise due to variety of circumstances as stated below :

(a) Accidental destruction of the subject matter of the contract.
(b) Non-existence or non occurrence of a particular state of things.
(c) Changes in law.
(d) Incapacity to perform a contract of personal services.

As can be seen above in point (d), in cases of contract of personal service, disability or incapacity to perform, caused by an act of God e.g. illness, constitutes lawful excuse for non-performance of the contract (*Robinson vs. Davison L.R. 6 Ex. 269*). Hence, Mr. Vipin has a valid excuse.

4. *Ajit sees a book displayed in a shelf of a book shop with a price tag of Rs. 95. Ajit tenders Rs.95 at the counter and asks for the book. The bookseller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. Is the bookseller bound to sell the book to Ajit?*

SOLUTION:

No. a display of goods with prices marked thereon is only an invitation for offer, and not an offer itself.

5. *X offered to sell his house to Y for Rs.50,000. Y accepted the offer by E-mail. On the next day Y sent a fax revoking the acceptance which reached X before the Email. Is the revocation of acceptance valid? Would it make any difference if both the E-mail of acceptance and the fax of revocation of acceptance reach X at the same time?*

SOLUTION:

Yes, the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. If the letter of acceptance (E-mail) and the Fax of revocation of acceptance reach X at the same time, the formation of contract will depend on the fact that which of the two is opened first by Y. If X reads the Fax letter first, revocation is valid but if he reads the E-mail first, revocation is not possible.

6. *Mr. Mohan an industrialist has been fighting a long drawn litigation with Mr. Kamal, another industrialist. To support his legal campaign Mr. Mohan enlists the services of Mr. Anil a legal expert stating that an amount of Rs.5 lakhs would be paid, if Mr. Anil does not take up the brief of Mr. Kamal. Mr. Anil agrees, but at the end of the litigation Mr. Mohan refuses to pay. Decided whether Mr. Anil can recover the amount promised by Mr. Mohan under the provisions of the Indian Contract Act, 1872.*

SOLUTION:

Agreement in restraint of trade is one wherein a person is restrained form exercising his lawful profession, trade or business of any kind and is to that extent void. However one of the exceptions to agreement in restraint of trade is in respect of "SERVICE AGREEMENTS" i.e. an agreement by which a person agrees not to carry on any service within the term of his agreement. Such a restriction will not amount to an agreement in restraint of trade. This case of Mr. Anil and Mohan falls in the category of an exception to an agreement in restraint of trade.
Conclusion: Mr. Anil can recover the amount from Mr. Mohan.

7. *Ramesh instructed Suresh, a transporter, to send a consignment of apples to Mumbai. After covering half the distance, Suresh found that the apples will perish before reaching Mumbai. He sold the same at half the market price. Ramesh sued Suresh. Will he succeed?*

SOLUTION

An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances. A typical case is where the ‘agent’ handling perishable goods like ‘apples’ can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here the agent acts in an emergency and acts as a man of ordinary prudence. In the given case Suresh had acted in an emergency situation and Ramesh will not succeed against him.

8. *X offered to sell his land to N for Rs. 28,000/-. N replied purporting to accept the offer and enclosed a cheque for Rs. 8,000/-. He also promised to pay the balance of Rs. 20,000/- in monthly installments of Rs. 5,000/- each. Examine the legal position.*

SOLUTION:

To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. With the above rules in mind, we may note that the following is the solution to the given problems:

(i) It is not a valid acceptance and no contract can come into being. In fact this problem is similar to the facts of Neale vs. Merret [1930] W.N 189, where M offered to sell his land to N for £ 280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly installments of £ 50. It was held that N could not enforce his acceptance because it was not an unqualified one.

(ii) This problem is similar to the facts of Union of India v. Bahulal (AIR 1968 Bombay 294) case, wherein A offered to sell his house to B for Rs. 1000/-, to which B replied that, “I can pay Rs.800 for it”. Consequently, the offer of ‘A’ is rejected by ‘B’ as the aceptance is not unqualified. But when B later changes his mind and is prepared to pay Rs. 1000/-, it becomes a counter offer and it is up to A whether to accept it or not.

9. *A offered to sell his house to B for Rs. 10000/-. B replied that he can accept the house for only Rs. 8,000/-. A rejected B’s counter offer to buy the house for Rs. 8,000/-. B later changed his mind and is now willing to buy the house for Rs. 10,000/-.*

SOLUTION

To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. With the above rules in mind, we may note that the following is the solution to the given problem

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10. *Do the following statements amount to involvement of fraud?*
Where the vendor of a piece of land told a prospective purchaser that, in his opinion, the land can support 2000 heads of sheep whereas, in truth, the land could support only 1500 sheep.

SOLUTION:
The problem is based on the facts of the case Bisset vs. Wilkinson (1927). In the given problem the vendor says that in his opinion the land could support 2000 heads of sheep. This statement is only an opinion and not a representation and hence cannot amount to fraud.

11. *Do the following statements amount to involvement of fraud?*
X bought shares in a company on the faith of a prospectus which contained an untrue statement that one Z was a director of the company. X had never heard of Z and the untrue statement of Z being a director was immaterial from his point of view. Can X claim damages on grounds of fraud?

SOLUTION:
The problem is based on the facts of the case Smith vs. Chadwick (1884). In the problem though the prospectus contains an untrue statement that untrue statement was not the one that induced X to purchase the shares. Hence X cannot claim damages.

12. *Does the right of lien exist in the following cases?*
A company agreed to garage the motor-car of H for three years, for an annual charge. H was entitled to take the car out of the company's garage as and when she liked. The annual payment being in arrear the company detained the car at the garage and claimed a lien.

SOLUTION:
In the given problem H was entitled to take the car away as and when she pleased. The possession by the garage was not continuous, and nor can we say that the possession at all vested in the company. Hence no right of lien exists [It was so held in a similar case of Hatton vs. Car Maintenance Ltd (1915)].

13. *Does the right of lien exist in the following cases?*
A, a watch-repairer, repaired B's watch for a total charge of Rs. 20. Before B took delivery of the watch, the shop caught fire through no fault of A, and B's watch was destroyed.

SOLUTION:
In the given case, the issue relates not to existence of lien but a rule relating to particular lien. As a rule, if through no fault of the bailee, the goods are destroyed or stolen then the bailee is entitled to be paid for services performed on the goods before they were destroyed or stolen. In the given instance 'A' is entitled to get his repair charges for the work he performed prior to fire.

14. *Mr. X, is employed as a cashier on a monthly salary of Rs.2,000 by ABC bank for a period of three years. Y gave surety for X's good conduct. After nine months, the financial position of the bank deteriorates. Then X agrees to accept a lower salary of Rs.1,500/- per month from Bank. Two months later, it was found that X has misappropriated cash since the time of his appointment. What is the liability of Y?*

SOLUTION

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 Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X during the first nine months but not for misappropriations committed after the reduction in salary. [Section 133, Indian Contract Act, 1872].

15. *Miss.Chitra, a singer, enters in to a contract with the manager of Bangalore Gate Club, to sing in the Club for two concerts every week during the next two months and the club agrees to pay her at the rate of Rs.2000 for each concert. On the seventh concert Miss.Chitra willfully absents herself. With the assent of the manager of the club, Miss.Chitra sings for the eighth concert. But on the following day, the club, puts an end to the contract. Can Miss.Chitra claim damages for breach of contract? Advice .*

SOLUTION

On the seventh Concert when Miss.Chitra willfully absents herself, the club is at liberty to put an end to the contract. If Miss.Chitra sings on the eighth Concert with the consent of the club. The club has signified its acquiescence in the continuance of the contract and cannot now put an end to it. The club is entitled to compensation for the damage sustained because of Miss.Chitra's failure to sing on the seventh concert. If the club puts an end to the contract, Miss.Chitra can claim damages for breach of contract [Section 39 of The Indian Contract Act, 1872)].

16. *Ram, Rahim and Robert are partners of software business and jointly promises to pay Rs.30, 000 to Raheja. Over a period of time Rahim became insolvent, but his assets are sufficient to pay one-forth of his debts. Robert is compelled to pay the whole. Decide whether Robert is required to pay whole amount himself to Raheja in discharging joint promise.*

SOLUTION

According Section 43 of Indian Contract Act, 1872 when two or more persons make a joint promise, the promisee may, in absence of express agreement to the contrary, compel any one or more of such joint promisers or perform the whole of the promise. Further, if any one of two or more joint promisers makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in this case, Robert is entitled to receive 2,500 from Rahim's assets and 13,750 from Ram.

17. *A promised to pay B for his services at his (A) sole discretion which found to be fair and reasonable. However, B dissatisfied with the payment made by A and wanted to sue him. Decide whether B can sue A under the provisions of Indian Contract Act, 1872?*

SOLUTION

B's suit will not be valid because the performance of a promise is contingent upon the mere will and pleasure of the promisor; hence, there is no contract. As per section 29 of the Indian Contract Act, 1872 – agreements, the meaning of which is not certain, or capable of being made certain, are void".

18. *Ajay induced Anil to buy his car saying that it was in a very good condition. After taking the car, Anil complained that there were many defects in the car. Ajay proposed to get it repaired and promised to pay 50% cost of repairs. After a few days, the car did not work at all. Now Anil wants to rescind the contract. Decide giving reasons.*

SOLUTION

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

1. 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.
2. 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.3. 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.

Problem:

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case Anil could not rescind the contract, as his acceptance to the offer of Ajay to bear 50% of the cost of repairs impliedly amount to final acceptance of the sale [Long v. Lloyd, (1958)].

19. *X advances to Y Rs.10,000 on the guarantee of Z. The loan carries interest at ten percent per annum. Subsequently, Y becomes financially embarrassed. On Y's request, X reduces the interest to six per cent per annum and does not sue Y for one year after the loan becomes due. Y becomes insolvent. Can X sue Z?*

SOLUTION

X cannot sue Z, because a surety is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor, no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety (Sec.133, Indian Contract Act, 1872).

20. *State whether the following contracts can be enforced.*

(i) Where there is a family settlement in writing and a family member who is not a party to the settlement wishes to enforce his claim

(ii) Where an orphanage wishes to enforce a promise made by a philanthropist to donate a specified sum.

(iii) An agreement to create an agency, in which consideration is absent.

SOLUTION

(i) As per the judgment in *Shuppu Vs Subramanian 33 Mad. 238*, a family settlement in writing, may be enforced by a member of the family who was not a party to the settlement.

(ii) A gratuitous promise such as a promise to donate money lacks consideration and cannot be enforced.

(iii) According to Section 185, of the Indian Contract Act,1872 an agreement creating an agency though devoid of consideration, is valid and can be enforced.

21. *A entered into an agreement with S to deliver five dozen bottles of a particular brand of champagne to be manufactured in his factory. The champagne could not be manufactured because of strike by the workers and A failed to supply the said dozen of champagne to S. Decide whether A can be exempted from liability under the provisions of the Indian Contract Act, 1872.*

SOLUTION

According to Section 56 (Para 2) of Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently). But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (Budget V Bennington; Jacobs V Credit Lyonnais). In this case Mr. A could not deliver the 5 dozen bottles of champagne as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 (Para 2) and hence Mr. A is liable to Mr. S for non-performance of contract.

22. *X buys from Y a painting which both believes to be the work of an old master and for which X pays a high price. The painting turns out to be only a modern copy .Discuss the validity of the contract?*

SOLUTION

The contract is absolutely void as there is a mutual mistake of both the parties as to the substance or quality of the subject-matter going to be the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab initio, as per section 20.

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

SOLUTION

M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

24. *Mr. Aman of Kolkata engaged Mr. Singh as his agent to buy a house in East Extension area. Mr. Singh bought a house for Rs.20 lakhs in the name of a nominee and then purchased it himself for Rs.24 lakhs. He then sold the same house to Mr. Aman for Rs.26 lakhs. Mr. Aman later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.*

SOLUTION

The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide, that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

(1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.

(2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Aman is entitled to recover Rs.6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

25. *M owes money to N under a contract. It is agreed between M, N and O that N shall henceforth accept O as his debtor instead of A. Referring to the provisions of the Indian Contract Act, 1872, state whether N can claim payment from O?*

SOLUTION

Yes, a contract need not be performed when the parties to it agree to substitute a new contract for it or to rescind or alter it. (Section 62, Indian Contract Act, 1872).

26. *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.

SOLUTION

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

1. 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.
2. 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.3. 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.

Problem:

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some 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 [Long v. Lloyd, (1958)].

27. *Father promised to pay his son a sum of Rs. One lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.*

SOLUTION

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour vs. Balfour (1912 2 KB. 571). Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of Rs.1 lakh from father for the reasons explained above.

28. *M advances to N Rs.5,000 on the guarantee of P. The loan carries interest at ten percent per annum. Subsequently, N becomes financially embarrassed. On N's request, M reduces the interest to six per cent* *per annum and does not sue N for one year after the loan becomes due. N becomes insolvent. Can M sue P?*

SOLUTION

M cannot sue P, because a surety is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor, no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety (Sec.133, Indian Contract Act, 1872).

29. *M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs.12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act.*

SOLUTION

Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd is obliged to compensate for the loss of Rs.1.25 lakhs (i.e. Rs.12.75 minus Rs.11.50 = Rs. 1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

30. *Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay Rs.60, 000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-forth 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.*

SOLUTION

According to Section 43 of Indian Contract Act, 1872 when two or more persons make a joint promise, the promisee may, in absence of express agreement to the contrary, compel any one or more of such joint promisers or perform the whole of the promise. Further, if any one of two or more joint promisers makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in this case, Sanjay is entitled to receive 5,000 from Vijay's assets and 27,500 from Ajay.

31.*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 in the light of the following:*

(i) The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.

(ii) The telegram of revocation and letter of acceptance both reached together.

<u>SOLUTION</u>

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 a complete as against the acceptor when it comes to the knowledge of the proposer. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Referring to the above provisions

(i) Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.

(ii) 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.

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

(i) 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 ?

(ii) 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 ?

<u>SOLUTION</u>

(i) 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 for the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case the B omits to supply the timber. Hence C is discharged from his liability.

(ii) 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.

33. *Mr. Dubious textile enters into a contract with Retail Garments Show Room for supply of 1,000 pieces of Cotton Shirts at Rs.300 per shirt to be supplied on or before 31st December, 2007. However, on 1st November, 2007 Dubious Textiles informs the Retail Garments Show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone upto Rs. 350 per shirt. Examine the rights of the Retail Garments Show Room in this regard.*

<u>SOLUTION</u>

Anticipatory breach of contract Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived. In such a situation the promise can claim compensation by way of loss or damage caused to him by the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfillment of the promise by the promisor is over. In the given problem Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1st November 2007 it self when it has time up to

31s'- December 2004 for performance of the contract of supply of goods. It is therefore called anticipatory breach of contract. Thus Retail Garments show room can claim damages from Dubious Textiles immediately after 1st November, 2007, without waiting up to 31s' December 2007. The damages will be calculated at the rate of Rs. 50 per shirt i.e. the difference between Rs. 350/- (the price prevailing on 1s1 November) and Rs. 300/- the contracted price.

34. *'A' stands surety for 'B' for any amount which 'C' may lend to B from time to time during the next three months subject to a maximum of Rs.50,000. One month later A revokes the guarantee, when C had lent to B Rs.5,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether 'A' is discharged from all the liabilities to 'C' for any subsequent loan. What would be your answer in case 'B' makes a default in paying back to 'C' the money already borrowed i.e. Rs.5,000?*

SOLUTION

The problem as asked in the question is based on the provisions of the Indian Contract Act 1872,as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. *By Notice :* A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
2. *By death of surety:* The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131). The liability of the surety for previous transactions however remains.

Thus applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan.

Answer in the second case would differ i.e. A Is liable to C for Rs. 5,000 on default of B since the loan was taken before the notice of revocation was given to C.

35. *Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide.*

SOLUTION

The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash in selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell. *[Fisher V. Bell (1961) Q.B. 394 Pharmaceutical society of Great Britain V. Boots Cash Chemists].*