

THE INDIAN CONTRACT ACT, 1872

Question 1

What is meant by 'Undue Influence'? 'A' applies to a banker for a loan at a time where there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Whether the contract is induced by undue influence? Decide. (Nov. 2002)

Answer

Meaning of Undue Influence:

Section 16 of the Indian Contract Act, 1872, states that a contract is said to be induced by undue influence where the relations subsisting between the parties are such that the parties are in a position to dominate the will of the other and used that position to obtain an unfair advantage over the other.

A person is deemed to be in that position:

- (a) where he holds real or apparent authority over the other or stands in a fiduciary relation to him;
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of old age, illness or mental or bodily distress.
- (c) where a man who is in position to dominate the will of the other enters into contract with him and the transaction appears to be unconscionable, the burden of proving that it is fair, is on him, who is in such a position.

When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence [section 16(3)]. Every transaction where the terms are to the disadvantage of one of the parties need not necessarily be considered to be unconscionable. If the contract is to the advantage of one of the parties but the same has been made in the ordinary course of business the presumption of undue influence would not be raised.

In the given problem, A applies to the banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence. As between parties on an equal

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footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of the borrower, the relief is granted on the ground of undue influence. But this is not the situation in this problem, and therefore, there is no undue influence.

Question 2

'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? (Nov. 2002)

Answer

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.

Question 3

State the grounds upon which a contract may be discharged under the provisions of Indian Contract Act, 1872 (Nov. 2002)

Answer

Discharge of a Contract:

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

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

obligation, but the promisee refuses to accept the performance. It amounts to attempted performance or tender :

- (2) *Discharge by mutual agreement* : Section 62 of the Indian Contract Act, 1872 provides if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.
- (3) *Discharge by impossibility of performance* : The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to (a). unforeseen change in law (b). The destruction of subject matter (c). The non-existence or non-occurrence of particular state of things d). the declaration of war (Section 56).
- (4) *Discharge by lapse of time* : A contract should be performed within a specific period as prescribed in the Law of Limitation Act, 1963. If it is not performed the party is deprived of remedy at law.
- (5) *Discharge by operation of law* : It may occur by death of the promisor, by insolvency etc.
- (6) *Discharge by breach of contract* : Breach of contract may be actual breach of contract or anticipatory breach of contract. When a person repudiates a contract before the stipulated time, for its performance has arrived, it is an anticipatory breach. If one of the parties to a contract breaks the contract the party injured thereby has a right of action for damages as well as he is also discharged from performing his part of the contract (Section 64).
- (7) A promisee may dispense with or remit the performance of the promise made to him or may accept any satisfaction he thinks fit. In the first case, the contract will be discharged by remission and in the second it is accord and satisfaction (Section 63).
- (8) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

Question 4

What is the status of a "finder of goods" under the Indian Contract Act, 1872? What are his rights?
(May 2003)

Answer

Status of a Finder of Goods & his Rights:

A person, who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. He is bound to take as much care of the goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value. He must also take all necessary measures to trace its owner. If he does not, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in goods will vest with the finder and he can retain the goods as his own against the whole world (except the owner, of course).

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A finder of goods has the following rights under the Indian Contract Act, 1872

1. *Right of lien*: The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expenses incurred in preserving the goods and finding out the owner. But he has no right to sue the owner for any such compensation (Section 168).
2. *Right to sue for reward*. The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward. (Section 168)
3. *Right of resale*: The finder has a right to sell the goods in the following cases:
 - (a) where the goods found is in danger of perishing;
 - (b) where the owner cannot, with reasonable diligence, be found out;
 - (c) where the owner is found out, but he refuses to pay the lawful charges of the finder; and
 - (d) where the lawful charges of the finder, in respect of the goods found, amount to 2/3rd of its value.

Question 5

Explain the general rules of relating to "Acceptance" under the Indian Contract Act, 1872.

(May 2003)

Answer

General Rules of Acceptance: Following are the general rules regarding acceptance under the Indian Contract Act, 1872:

1. Acceptance must be absolute and unqualified [Section 7(1)].
2. Acceptance must be in the prescribed manner. If the offer is not accepted in the prescribed manner, then the offeror may reject the acceptance within a reasonable time.
3. Acceptance must be communicated to the offeree. If acceptance is communicated to the person, other than the offeror, it will not create any legal relationship.
4. Acceptance must be given by the party to whom the offer is made.
5. Acceptance must be given within the prescribed time or within a reasonable time.
6. Acceptance cannot be given before communication of an offer.
7. Acceptance must be made before the offer lapses or is withdrawn.
8. Acceptance must show intention to fulfil the promise.
9. Acceptance can not be presumed from silence.
10. Doing of desired act amounts to acceptance.

Question 6

What tests can be applied in determining whether a person is an agent of another? State any five circumstances whereunder an agent is personally liable to a third party for the acts during the course of agency . (May 2003)

Answer

Determining Agency & Agent

The test for determining whether a person is or is not an agent is whether that person has the capacity to bind the principal and make him answerable to a third person by bringing him (the principal) into legal relations with the third person and thus establish a privity of contract between the party and the principal. If yes, he is agent, otherwise not. This relationship of agency may be created either by express agreement or by implication:

Under the following circumstances an agent is personally liable.

1. When he represents that he has authority to act on behalf of his principal, but who does not actually possess such authority or who has exceeded that authority and the alleged employer does not ratify his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.
2. Where a contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to required performance of it.
3. Where the contract expressly provides for the personal liability of the agent.
4. When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
5. Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
6. Where the agent works for a foreign principal.
7. Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India, In such a case the suit against the agent can be instituted by the third party only and not by the principal (*Chatturbhuj v. Moheshwar*).
8. Where according to the usage of trade in certain kinds of business, agents are personally liable.

Question 7

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. (November 2003)

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Answer

Misrepresentation & the Problem: 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)].

Question 8

Sunil delivered his car to Mahesh for repairs. Mahesh completed the work, but did not return the car to Sunil within reasonable time, though Sunil repeatedly reminded Mahesh for the return of car. In the meantime a big fire occurred in the neighborhood and the car was destroyed. Decide whether Mahesh can be held liable under the provisions of the Indian Contract Act, 1872.
(November 2003)

Answer

The problem asked in the question is based on the provisions of section 160 and 161 of the Indian Contract Act 1872. Accordingly, it is the duty of the bailee to return or deliver the goods bailed according to the bailor's directions, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed for any loss, destruction of the goods from that time (Section 161), notwithstanding the exercise of reasonable care on his part.

Therefore, applying the above provisions in the given case, Mahesh is liable for the loss, although he was not negligent, but because of his failure to deliver the car within a reasonable time (*Shaw & Co. v. Symmons & Sons*).

Question 9

What do you understand by "Agency by Ratification"? What is the effect of ratification? Point out any four elements of a valid ratification.
(November 2003)

Answer**Agency by Ratification; its effect & essentials of valid ratification:**

Meaning: A person may act on behalf of another without his knowledge or consent. Later on such another person may accept the act of the former or reject it. If he accepts the act of the former done without his consent, he is said to have ratified that act and it places the parties in exactly the same position in which they would have been if the former had later's authority at the time he made the contract. Likewise, when an agent exceeds the authority bestowed upon him by the principal, the principal may ratify the unauthorised act.

Effect of Ratification: The effect of ratification is to tender the acts done by one person (agent) on behalf of another (principal), without his (principal's) knowledge or authority, as binding on the other person (principal) as if they had been performed by his authority (Section 196: Indian Contract Act, 1872).

Further, ratification relates back to the date when the act was done by the agent. This means the agency comes into existence from the moment the agent first acted and not from the time when the principal ratified the act.

Essentials of a valid Ratification

1. The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract.
2. The principal must be in existence at the time of contract.
3. The principal must have contractual capacity both at the time of the contract and at the time of ratification.
4. The principal must have the full knowledge of all the material facts.
5. Ratification must be done within a reasonable time of the act purported to be ratified.
6. The act to be ratified must be lawful and not void or illegal or ultra vires in case of a company.
7. The whole transaction can be ratified.
8. Ratification must be communicated to the party who is sought to be bound by the act done by the agent.
9. Ratification can be of the acts which the principal had the power to do.
10. Ratification should not put a third party to damages.
11. Ratification relates back to the date of the act of the agent.

Question 10

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.
(May 2004)

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Answer

Invitation to offer

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

The display of articles with a price in it in a self-service shop is merely an invitation to offer. 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*].

Question 11

Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872. (May 2004))

Answer

Delivery of Bags

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. Akhilesh could not deliver the bags 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. Akhilesh is liable to Mr. Shekhar for non-performance of contract.

Question 12

Mr. Seth an industrialist has been fighting a long drawn litigation with Mr. Raman another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of Rs. 5 lakhs would be paid, if Mr. X does not take up the brief of Mr. Raman. Mr. X agrees, but at the end of the litigation Mr. Seth refuses to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872.
(November 2004)

Answer

The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void. A void agreement is one without any legal effect. Thus any agreement in restraint of trade, marriage, legal proceedings etc., are void agreements. Thus Mr. X cannot recover the amount of Rs. 5 lakhs promised by Mr. Seth because it is an illegal agreement and cannot be enforced by law.

Question 13

What is meant by Anticipatory Breach of Contract?

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, 2004. However, on 1st November, 2004 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.
(November 2004)

Answer

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 promisee 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 2004 itself when it has time upto 31st 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, 2004, without waiting upto 31st December 2004. The damages will be calculated at the rate of Rs. 50 per shirt i.e. the difference between Rs. 350/- (the price prevailing on 1st November) and Rs. 300/- the contracted price.

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Question 14

Distinguish between Contract of Indemnity and Contract of Guarantee. (November 2004)

Answer

Contract of indemnity	Contract of Guarantee
1. There are two parties to the contract viz. indemnifier (promisor) and the Indemnified (promise).	1. There are three parties to the viz. creditor, principal debtor and the surety
2. Liability of the indemnifier to the indemnified is primary and independent.	2. Liability of the surety to the creditor is collateral or secondary, the primary liability being that of the principal debtor.
3. There is only one contract in case of a contract of indemnity, i.e., between the indemnifier and the indemnified.	3. In a contract of guarantee there are three contracts, between principal Debtor and Creditor; between creditor and the surety and between surety and principal debtor.
4. It is not necessary for the indemnifier to act at the request of the indemnified.	4. It is necessary that surety should give the guarantee at the request of the debtor.
5. The liability of the indemnifier arises only on the happening of a contingency.	5. There is usually an existing debt or duty, the performance of which is guaranteed by the surety.
6. An indemnifier cannot sue a third party for loss in his own name, because there is no privity of contract. He can do so only if there is an assignment in his favour.	6. A surety, on discharging the debt due by the principal debtor, steps into the shoes of the creditor. He can proceed against the principal debtor in his own right

Question 15

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

(May 2005)

Answer

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.

Question 16

A hire a carriage of B and agrees to pay Rs.500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B
(May 2005)

Answer

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

Question 17

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.
(May 2005)

Answer

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

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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.

Question 18

Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West 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. Ahuja for Rs.26 lakhs. Mr. Ahuja 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.

(November 2005)

Answer

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. Ahuja is entitled to recover Rs.6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Question 19

Miss X, a film actress agreed to work exclusively for a period of two years, for a film production company. However, during the said period she enters into a contract to work for another film producer. Discuss the rights of the aggrieved film production company under the Indian Contract Act, 1872.

(November 2005)

Answer

Where a party commits a breach of negative term of a contract i.e., where he does something which he promised not to do, the aggrieved party can go to court which may be issue an order restraining him from doing what he promised not to do. Such an order of the

court is known as injunction. Since Miss X has agreed to work exclusively for the film production company for a period of two years, the aggrieved film production company can go to court and get injunction order restraining Miss X working for another film production company. A similar decision was taken in the case of *Warrior Bros vs. Nelson* (1937) 1 K.B. 209

Question 20

“An agreement made without consideration is void. “With reference to provisions of the Indian Contract Act, 1872 examine the validity of the statement and explain the cases in which the statement does not apply. (November 2005)

Answer

Validity of an Agreement without consideration: The general rule is that an agreement made without consideration is void (Section 25). In every valid contract consideration is very important. A contract may only be enforceable when an adequate consideration is there. However, the Indian Contract Act, 1872 contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

- 1. Natural Love and Affection:** A written and registered agreement based on Natural Love and Affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. A contract in writing, registered on account of natural love and affection between parties standing near relation to each other are the essential requirements for valid contract though it is without consideration. (*Rajlukhee Devee vs. Bhootnath*).
- 2. Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under (Section 25(2)). In order that a promise to pay for the past voluntary services is binding, the following essential factors must exist:
 - (i) the services should have been rendered voluntarily.
 - (ii) the services must have been rendered for the promisor.
 - (iii) the promisor must be in existence at the time when services were rendered.
 - (iv) the Promisor must have intended to compensate to the promisee.
- 3. Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].
- 4. Agency:** According to Section 185 of the Indian Contract Act, 1872 no consideration is necessary to create an agency.s
- 5. Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 of the Act states “Nothing in this section shall affect

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the validity as between the donor and donee, of any gift actually made.” Thus, gifts do not require any consideration.

Question 21

Examine the validity of a contract when the acceptance from the offeree is obtained under ‘Coercion’ or under ‘Undue influence’. Point out the distinction between ‘Coercion’ and ‘Undue influence’.
(November 2005)

Answer

According to Section 19 of the Indian Contract Act, 1872 when consent to an agreement is given due to coercion or undue influences, such a contract is voidable at the option of the party whose consent was so obtained. The difference between coercion and undue influence is as under:

Coercion	Undue Influence
(a) It involves the physical force or threat. The aggrieved party is complete to make the contract against its will.	It involves moral or mental pressure. The aggrieved party believes that he or she would make the contract.
(b) It involves committing or threatening to commit an act forbidden by Indian Penal Code for detaining or threatening to detain property of another person.	No such illegal act is committed or a threat is given.
(c) It is not necessary that there must be some relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.
(d) Coercion need not proceed from the promisor nor need it be directed against the promisor.	Undue influence is always essential between the parties to the contract.
(e) The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form.
(f) In case of coercion where the aggrieved party, as per Section 64, rescinds the contract any benefit received has to be restored back to the other party.	The court has the distinction to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions.

Question 22

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.*

(May 2006)

Answer

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.

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

Question 23

Explain the circumstances whereunder a party to a contract may be exempted from the performance of contract on the ground of 'Supervening impossibility' under the Indian Contract Act, 1872.

(May 2006)

Answer

Supervening impossibility: When performance of a promise becomes impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, is called supervening impossibility. In case of supervening impossibility the contract becomes void.

Circumstances: A party to a contract may be excused from the performance of his promise on the ground of 'supervening impossibility' under the Indian Contract Act, 1872 in the following circumstances.

- (a) **Accidental destruction of the subject matter of the contract:** If the subject matter of the contract is destroyed by an accident both the parties are excused from the performance of the contract.
- (b) **Non-existence or non occurrence of a particular state of things:** Non-existence or non occurrence of a particular state of things of the contract exempts the parties from the performance of the contract.

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- (c) Incapacity to perform a contract of personal services: In case of contract of personal service, disability or incapacity to perform, caused by the act of God e.g. illness, constitutes lawful excuse for non-performance of the contract.
- (d) Change in law: Performance of a contract may also become impossible due to a subsequent change in the law. The law passed after the contract may prohibit performance of some act, which may be very basis of the contract. As such the contract is discharged due to subsequent impossibility and the parties become free from their mutual obligations.
- (e) Outbreak of war: Contracts may be affected by war in a variety of ways, viz., (i) by emergency legislation controlling prices or otherwise relating to restriction of trade; (ii) by prohibiting or restraining transaction with alien enemy.

Question 24

Ravi becomes guarantor for Ashok for the amount which may be given to him by Nalin within six months. The maximum limit of the said amount is Rs. 1 lakh. After two months Ravi withdraws his guarantee. Upto the time of revocation of guarantee, Nalin had given to Ashok Rs. 20,000.

- (i) *Whether Ravi is discharged from his liabilities to Nalin for any subsequent loan.*
- (ii) *Whether Ravi is liable if Ashok fails to pay the amount of Rs. 20,000 to Nalin ?*

(May 2006)

Answer

Discharge of Surety by Revocation (Problem): As per section 130 of the Indian Contract Act, 1872 a specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.

As per the above provisions (i) Yes, Ravi is discharged from all the subsequent loan because it's a case of continuing guarantee. (ii) Ravi is liable for payment of Rs. 20,000 Nalin because the transaction has already completed

Question 24

X, a minor was studying in M.Com. in a college. On 1st July, 2005 he took a loan of Rs. 10,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2005. X possesses assets worth Rs. 2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed. (November 2006)

Answer

Yes, B can proceed against the assets of X. According to section 68 of Indian Contract Act 1872 "If a person, incapable of entering into a contract, or any one 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." Since the loan given to X is for the necessities suited to the conditions in life of the minor, his assets can be sued to reimburse B.

Question 25

"The relationship of principal and agent (i.e. Agency) may be constituted by Subsequent ratification by the principal." Examine the validity of the statement and state the requisites of a valid ratification in the light of the provisions of the Indian Contract Act, 1872.

(November 2006)

Answer

Where an agent does an act for his principal without his knowledge or authority or where he exceeds the given authority, the principal is not held bound by the transaction so made. However, Section 196 of the Indian Contract Act, 1872, permits the principal to ratify the act of the agent. According to this section "Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority "Agency in such a case is said to be constituted by ratification.

To be valid, a ratification must fulfill the following conditions:

- (i) The agent must purport to act as an agent.
- (ii) The principal must have been in existence at the time the agent originally acted.
- (iii) Ratification may be expressed or implied (Section 197).
- (iv) No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective (Section 198).
- (v) Ratification must be of the entire transaction. A contract cannot be ratified partially (Section 199).
- (vi) Ratification of unauthorized act must not injure third person. (Section 200)
- (vii) An illegal act cannot be ratified.
- (viii) The person ratifying the act must have contractual capacity.

Question 26

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 ?*

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- (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 ?(November 2006)*

Answer

- (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.

Question 27

Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid ? (May 2007)

Answer

Yes, X is bound to make good to Y the amount so paid. Section 69 of the Indian Contract Act, 1872, provides that "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. In the given case Y has made the payment of lawful dues of X in which Y had an interest. Therefore, Y is entitled to get the reimbursement from X.

Question 28

Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:

- (i) *V parks his car at a parking lot, locks it, and keeps the keys with himself.*
- (ii) *Seizure of goods by customs authorities. (May 2007)*

Answer

- (i) No. Mere custody of goods does not mean possession. For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it (Section 148, Indian Contract Act, 1872 is not applicable).
- (ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore

bailment exists and section 148 is applicable.

Question 29

A contracted with B to supply him (B) 500 tons of iron-steel @ Rs. 5,000 per ton, to be delivered at a specified time. Thereafter, A contracts with C for the purchase of 500 tons of iron-steel @ Rs. 4,800 per ton, and at the same time told 'C' that he did so for the purpose of performing his contract entered into with B. C failed to perform his contract in due course. Consequently, A could not procure any iron-steel and B rescinded the contract. What would be the amount of damages which A could claim from C in the circumstances ? Explain with reference to the provisions of the Indian Contract, 1872. (May 2007)

Answer

The problem in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 73. Section 73 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. The leading case in this point is *Hadley v Baxendale*.

In "*Hadley vs. Baxendale*" it was decided that if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated.

In the instant case 'A' had intimated to 'C' that he was procuring iron steel from him for the purpose of performing his contract with 'B'. Thus, C had the knowledge of the special circumstance. Therefore, 'A' is entitled to claim from 'C' Rs. 1,00,000 (difference between the procuring price of iron steel and contracted selling price to 'B') being the amount of profit 'A' would have made by the performance of his contract with 'B'. If A had not told C of B's contract then the amount of damages would have been the difference between the contract price and the market price on the day of default

Question 30

'X' agreed to become an assistant for 5 years to 'Y' who was a Doctor practising at Ludhiana. It was also agreed that during the term of agreement 'X' will not practise on his own account in Ludhiana. At the end of one year, 'X' left the assistantship of 'Y' and began to practise on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so? (November 2007)

Answer

An agreement in restraint of trade/business/profession is void under Section 27 of the Indian Contract Act, 1872. But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any

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business in direct competition with that of his employer is not in restraint of trade. However in the given case X cannot be restrained by an injunction from doing so.

Question 31

X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay a sum of Rs. 5,000 per month to N (the sister of the executant). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N. (November 2007)

Answer

As per Section 2 (d) of the Indian Contract Act, 1872, in India, it is not necessary that consideration must be supplied by the party, it may be supplied by any other person including a stranger to the transaction.

The problem is based on a case "*Chinnaya Vs. Ramayya*" in which the Court clearly observed that the consideration need not necessarily move from the party itself, it may move from any person. In the given problem, the same reason applies. Hence, M is liable to pay the said sum to N and cannot deny her liability on the ground that consideration did not move from N.

Question 32

X, Y and Z jointly borrowed Rs.50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

- (i) *Y can recover the contribution from X and Z,*
- (ii) *legal representatives of X are liable in case of death of X,*
- (iii) *Y can recover the contribution from the assets, in case Z becomes insolvent.*

(November 2007)

Answer

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a

contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because XYZ are joint promisors.
- (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- (iii) 'Y' also can recover the contribution from Z's assets.

Question 33

Point out with reasons whether the following agreements are valid or void:

- (i) *Kamala promises Ramesh to lend Rs. 50,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.*
- (ii) *Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.*
- (iii) *Ram sells the goodwill of his shop to Shyam for Rs. 4,00,000 and promises not to carry on such business forever and anywhere in India.*
- (iv) *In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceeding against each other without consent..*
- (v) *Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.*

(May 2008)

Answer

Validity of agreements

- (i) *Void Agreement:* As per Section 23 of the Indian Contract Act, 1872 an agreement is void if the object or consideration is against the public policy.
- (ii) *Void Agreement:* As per Section 20 of the Indian Contract Act, 1872 the contract caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.
- (iii) *Void agreement:* As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
- (iv) *Void agreement:* An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.
- (v) *Valid agreement:* An agreement with alien friend is valid, but an agreement with alien enemy is void.

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Question 34

Ravi sent a consignment of goods worth Rs. 60,000 by railway and got railway receipt. He obtained an advance of Rs. 30,000 from the bank and endorsed and delivered the railway receipt in favour of the bank by way of security. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for Rs. 60,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

(May 2008)

Answer

Rights of Bailee

As per Sections 178 and 178A of the Indian Contract Act, 1872 the deposit of title deeds with the bank as security against an advance constitutes a pledge. As a pledge, a banker's rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pledgee would have all such remedies that the owner of the goods would have against them. In *Morvi Mercantile Bank Ltd. vs. Union of India*, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment. However, the amount over and above his interest is to be held by him in trust for the pledgor. Thus, the bank will succeed in this claim of Rs. 60,000 against Railway.

Question 35

R is the wife of P. She purchased some sarees on Credit from Q. Q demanded the amount from P. P refused. Q filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Q would succeed?

(May 2008)

Answer

Problem on Agency

Problem as 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).

Applying the above conditions in the given case 'Q' will succeed. He can recover the said amount from 'P' if sarees purchased by 'R' are necessities for her.

Question 36

M lends a sum of Rs.5,000 to B, on the security of two shares of a Limited Company on 1st April 2007. On 15th June, 2007, the company issued two bonus shares. B returns the loan amount of Rs.5,000 with interest but M returns only two shares which were pledged and refuses to give the two bonus shares. Advise B in the light of the provisions of the Indian Contract Act, 1872.
(November 2008)

Answer

Bailee's duties and Liabilities

The problem as asked in the question is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed."

Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by B to M. So M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also (*Motilal v Bai Mani*).

Question 37

B owes C a debt guaranteed by A. C does not sue B for a year after the debt has become payable. In the meantime, B becomes insolvent. Is A discharged? Decide with reference to the provisions of the Indian Contract Act, 1872.
(November 2008)

Answer

Discharge of surety

The problem is based on the provisions of Section 137 of the Indian Contract Act, 1872 relating to discharge of surety. The section states that mere forbearance on the part of the creditor to sue the principal debtor and/or to enforce any other remedy against him would not, in the absence of any provision in the guarantee to the contrary, discharge the surety. In view of these provisions, A is not discharged from his liability as a surety.

Question 38

"Good Girl" Soap Co. advertised that it would give a reward of Rs.1,000 who developed skin disease after using, "Good Girl" soap of the company for a certain period according to the printed directions. Miss Rakhi purchased the advertised "Good Girl" and developed skin disease in spite of using this soap according to the printed instructions. She claimed reward of Rs.1,000. The company refused the reward on the ground that offer was not made to her and that in any case she had not communicated her acceptance of the offer. Decide whether Miss

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Rakhi can claim the reward or not. Refer the relevant case law, if any. (November 2008)

Answer

General offer

Yes, Miss Rakhi can claim the reward of Rs.1,000 because the advertisement issued by the company is an offer made to the public in general and hence any one can accept and do the desired act. Where a general offer is of continuing nature, it will be open for acceptance to any number of persons until it is retracted. The Contract Act posits that performance of the conditions of a proposal is an acceptance of the proposal. So there is no need of actual and formal offer and the communication of an acceptance of an offer. Relevant case law is *Carlill v. Carbolic Smoke Ball Co.*