

Question 16

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

- (a) If P says nothing about the unsoundness of the horse to Q.
- (b) If P says nothing about it to Q who is P's daughter who has just come of age.
- (c) If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing.

(3 Marks)

By - CA Shantam Gupta

Question 16

Law

According to Section 17 of the Indian Contract Act 1872, silence is not equivalent to fraud unless, the parties involved are in fiduciary relationship with one another or the silence is equivalent to speech.

Fact

P sells a horse to Q of which P is aware that horse is of unsound mind.

Conclusion

- (i) If P does not inform Q of the unsoundness of the horse it is not fraud.
- (ii) If P and Q are related then there is a fiduciary relationship which requires disclosure of all material facts including unsoundness of the horse, hence it is fraud.
- (iii) In this case the silence has amounted to speech, hence non disclosure in this case is fraud.

Question 18

30

X, Y and Z are partners in a Partnership Firm. They were carrying their business successfully for the past several years. Due to expansion of business, they planned to hire another partner Mr. A. Now the firm has 4 partners X, Y, Z and A. The business was continuing at normal pace. In one of formal business meeting, it was observed that Mr. Y misbehaved with Mrs. A (wife of Mr. A). Mr. Y was badly drunk and also spoke rudely with Mrs. A. Mrs. A felt very embarrassed and told her husband Mr. A about the entire incident. Mr. A got angry on the incident and started arguing and fighting with Mr. Y in the meeting place itself. Next day, in the office Mr. A convinced X and Z that they should expel Y from their partnership firm. Y was expelled from partnership without any notice from X, A and Z.

Considering the provisions of the Indian Partnership Act, 1932, state whether they can expel a partner from the firm. What are the criteria for test of good faith in such circumstances?

(6 Marks)

By - CA Shantam Gupta

Q18

Law

According to Section 33 of the Indian Partnership Act 1932, a partner may be expelled from the partnership firm if:

- expulsion is as per an express agreement between partners.
- removal is in good faith i.e. in the best interest of the firm.
- removal is supported by majority of partners.

The test of good faith involves:

- a notice being served to the partner
- removal in best interest of the firm.
- an opportunity of being heard is awarded.

fact

Mr. Y was expelled from the firm by majority of X, Z, and A for his behaving with A's wife

Conclusion

Mr. Y's removal is void, i.e. without any legal effect, since no notice was given to him nor any valid reason for removal exists.

Question 19

Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of ₹ 40,000. He was very happy to get ₹ 40,000 and quickly went to the market and purchased a laptop worth ₹ 30,000. He happily spent the rest of the amount with his friends on a pleasure trip. Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872?

By - CA Shantam Gupta

Q19

Law

According to Section 11 of the Indian Contract Act 1872,

Any agreement with a minor is void ab initio, i.e. it is void from

the beginning, a minor can always plead minority in the

court of law and there is no estoppel against the minor

Similarly as per section 68 where a contract is for

necessity recovery from estate of the minor is possible

even under a void contract as it is a quasi obligation

by law.

fact

A Minor pledged his watch to obtain 40,000 rupees

which he spent on a laptop and now wants to

get back the watch from the shopkeeper without paying

the loan.

Conclusion

• The shopkeeper cannot lawfully sue the minor or retain the watch as the contract is void.

• Assuming that the laptop was a necessity and a part of minor's estate the shopkeeper can retain the laptop as in full discharge of his claim of 40,000.

• The loss of ₹ 10,000 shall not be recoverable.

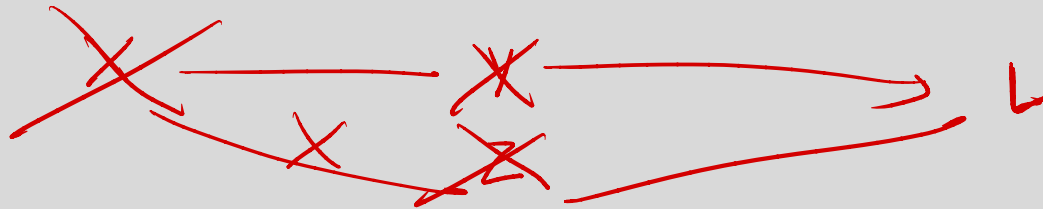
~~Question 20~~ H/W

insta ca-shaen-gupta

X, Y and Z jointly borrowed ₹90,000 from L. Decide each of the following in the light of the Indian Contract Act, 1872:

- (i) Whether L can compel only Y to pay the entire loan of ₹90,000? *Yes*
- (ii) Whether L can compel only the legal representatives of Y to pay the loan of ₹90,000, if X, Y and Z died?
- (iii) Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?

(6 Marks)



By - CA Shantam Gupta

Q20

Law

According to the relevant provisions of the Indian Contract Act 1872, all the joint promisors are jointly and severally responsible for the liability due to the outsider however the legal representatives are always jointly responsible with other joint promisors.

If one of the joint promisors is excused by the outsider, the ^{other} joint promisors can lawfully obtain contribution from such joint promisor.