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BUSINESS LAW

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Chapter: 2 - Indian Contract Act, 1872

Unit: 4 - Performance of Contract

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

23 - Nitesh Gupta is constructing his house. For this purpose, he entered in a contract with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House has two Lorries of 5,000 brick capacity. On 12th August 2023, one of the Lorries was not in working condition so M/s Baba Brick House supplied only 5,000 bricks and promised Nitesh Gupta to supply rest 5,000 bricks on next day. Nitesh Gupta wants to cancel the contract, as M/s Baba Brick House did not supply the bricks as per the contract. M/s Baba Brick House gave the plea that no fault has been made from its part, hence contract should not be cancelled. In this situation, whether Nitesh Gupta can avoid the contract under Indian Contract Act, 1872?

4)a)i)4m,MDTP1

Ans - "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Further, the performance should be for whole obligations. Part delivery cannot be considered as valid performance.

In the instant case, Nitesh Gupta contracted with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House had only two Lorries of 5,000 brick capacity. But on the agreed date one lorry was not in working condition so only 5,000 bricks were supplied on 12th August 2023 and promised to supply rest 5,000 bricks on next day.

After taking into account the above provisions and facts, Plea of M/s Baba Brick House cannot be considered. Performance should be for whole obligation. Hence, part performance by M/s Baba Brick House cannot be taken as valid performance. Nitesh Gupta is right in avoiding the contract.

22 - A, B and C jointly promised to pay D a sum of ` 6,000. Examine, considering the provisions of the Indian Contract Act, 1872 -

(i) Can D compel any of three parties A, B and C to pay him ` 6,000?

(ii) C is compelled to pay the whole of the amount to D. Can he recover anything from A and B, when - (1) Both A and B were solvents. (2) A is not in a position to pay anything.

4)a)7m,Jan2025

Ans - 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 from the contract, all such persons jointly must fulfil 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 promisors, the representatives of all jointly must fulfil 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 contract). 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.

In the instant case,

- (i) D can compel any of three parties A, B and C to pay him ` 6,000.
- (ii) (1) C can recover the contribution from A and B because A, B and C are joint promisors.
- (2) A is unable to pay anything, C is compelled to pay the whole. C is entitled to receive ` 3,000 from B.

21 - Woollen Garments Limited entered into a contract with a group of women in July, 2023 to supply various woollen clothes for men, women and kids like sweaters, monkey caps, mufflers, woollen coats, hand gloves etc. before the commencement of the winter season. The agreement expressly provides that the woollen clothes shall be supplied by the end of October, 2023 before starting of winter season. However, due to the prolonged strike, women group could tender the supplies in March, 2024 when the winter season was almost over. Analysing the situation and answer the following questions in light of the provisions of The Indian Contract Act, 1872:

(A) Whether company can reject the total supply by women group?

(B) Whether company can accept the total supply on request of women group?

4)a)ii)3m, MDTP10, 4)a)ii)3m, Sept2024

Ans - According to section 55 of the Indian Contract Act, 1872, when a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

Effect of acceptance of performance at time other than agreed upon -

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he gives notice to the promisor of his intention to do so.

In the instant case,

(A) Woollen Garments Limited is legally entitled to reject the goods due to the failure to meet the delivery deadline, as time was a crucial term of the contract.

(B) The company cannot accept the total supply on the request of woman group but only when the company i.e. buyer elects to do so. In that case, the company cannot claim compensation for any loss occasioned by the non-performance of the promise (i.e. delay in supply) at the time agreed.

20 - Explain any five circumstances under which contracts need not be performed with the consent of both the parties. 5)c)6m,MDTP1, RTP,Sept2024, 5)c)6m,MTP1,June2024

Ans - Under following circumstances, the contracts need not be performed with the consent of both the parties:

i) Novation: Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties, the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)

ii) Rescission: A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)

(iii) Alteration: Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)

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

(v) **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.

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

19 - Mr. J entered into an agreement with Mr. S to purchase his house for ` 20 lakh, within three months. He also paid ` 50,000/- as token money. In the meanwhile, in an anti-encroachment drive of the local administration, Mr. S's house was demolished. When Mr. J was informed about the incident he asked for the refund of token money.

Referring to the relevant provisions of the Indian Contract Act, 1872 state whether Mr. J is entitled to the refund of the amount paid.

4)a)i)4m,MDTP8,9, 4)a)i)4m,MTP2,Jan2025, 4)a)i)4m,June2024

Ans - According to section 56 of the Indian Contract Act, 1872, an agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

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

In the instant case, Mr. J entered into a contract with Mr. S to purchase his house for ` 20 lakh, with a token payment of ` 50,000. The agreement included a condition that the sale would be completed within three months. Before the completion of the sale, the house was demolished by the local administration. This event made it impossible for Mr. S to sell the house to Mr. J as agreed.

In this situation, Mr. J is required to refund ` 50,000 token money paid to Mr. S, as the contract to sell the house has become void due to the demolition of the house by the local administration, as a result of which it becomes impossible to sell the house on the part of S.

18 - T owes G, the following debts as per the table given below:

Amount of the Debt (in `)	Position of Debt
5,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act,1963
3,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act,1963
12,500	Due on 1st April, 2022
10,000	Due on 15th July, 2023
7,500	Due on 25th November, 2023

G makes payment on 1st April, 2023 mentioned as below without any notice regarding how to appropriate the amount/ payment.

i) A cheque of ` 12,500

ii) A cheque of ` 4,000.

In such a situation how the appropriation of the payment is done against the debts as per the provisions of the Indian Contract Act, 1872 by assuming that T also has not appropriated the amount received towards any particular debt.

1)a)4m, Dec2023

Ans - As per the provisions of Section 59 of the Indian Contract Act, 1872, where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

As per the provisions of Section 61 of the Indian Contract Act, 1872, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

In the present case, G made two payments by way of two cheques. Also, neither G nor T said anything as to the appropriation of the amount towards any particular debt.

Since one of the issued cheques was exactly the amount of the debt due i.e. of ` 12,500, by applying the provisions of Section 59 we can say that this is a circumstance indicating for appropriation against that particular debt.

Cheque of ` 4,000 can be appropriated in terms of the provisions of Section 61 since neither of the parties, have made any appropriation. The amount will be appropriated in discharging of the debts in order of time against any lawful debt whether they are or are not barred by the law in force for the time being as to the limitation of suits.

Hence cheque of ` 12,500 will be appropriated against the debt of ` 12,500 which is due on 1st April, 2022. As per the scenario given in the question, since two debts are persisting in order of time which were treated as time barred on 1st July 2023, the amount of ` 4,000 will be appropriated proportionately, i.e. in proportion of 5,000:3,000. Therefore as per the provisions of the Indian Contract Act, 1872, ` 2,500 will be appropriated for the first debt and ` 1,500 will be appropriated towards the second debt.

17 - Mr. Sohan, a wealthy individual provided a loan of ` 80,000 to Mr. Mukesh on 26th February, 2021. The borrower, Mr. Mukesh asked for a further loan of ` 1,50,000. Mr. Sohan agreed but provided the loan in parts on different dates. He provided ` 1,00,000 on 28th February, 2021 and remaining ` 50,000 on 3rd March, 2021.

On 10th March, 2021 Mr. Mukesh while paying off part ` 75,000 to Mr. Sohan insisted that the lender should adjusted ` 50,000 towards the loan taken on 3rd March, 2021 and balance as against the loan on 26th February, 2021.

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

Now you decide:

- i) Whether the contention of Mr. Mukesh correct or otherwise as per the provisions of the Indian Contract Act, 1872?**
- ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?**

What would be the mode of adjustment/appropriation of such part payment in case neither Mr. Sohan nor Mr. Mukesh insist any order of adjustment on their part?

RTP, Jan2025, RTP, Dec2023

Ans - Appropriation of Payments: In case where a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.

- i) As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Therefore, the contention of Mr. Mukesh is correct, and he can specify the manner of appropriation of repayment of debt.

- ii) As per the provisions of 60 of the Act, where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Hence in case Mr. Mukesh fails to specify the manner of appropriation of debt on part repayment, Mr. Sohan the creditor, can appropriate the payment as per his choice.

- iii) As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

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

16 - Mr. Sooraj promises Mr. Manoj to paint a family picture for ` 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj on 15th March, 2023 against a payment of ` 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

Decide as per the provisions of the Indian Contract Act, 1872.

4)a)ii)4m,MDTP4, RTP,June2024, 4)a)ii)4m,MTP3,June2024, 3)b)ii)4m,June2023

Ans - The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. Sooraj has to paint a family picture for Mr. Manoj, Mr. Manoj cannot ask the legal representative of Mr. Sooraj to complete the painting work on Mr. Sooraj's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. Sooraj had promised to deliver some photographs to Mr. Manoj, the legal representatives of Mr. Sooraj shall be bound to deliver the photographs in this situation.

15 - Mr. Harish owes payment of 3 bills to Mr. Ashish as on 31st March, 2022. (i) ` 12,120 which was due in May 2018. (ii) ` 5,650 which was due in August 2020 (iii) ` 9,680 which was due in May 2021. Mr. Harish made payment on 1st April 2022 as below without any notice of how to appropriate them:

- i) A cheque of ` 9,680
- ii) A cheque of ` 15,000

Advice under the provisions of the Indian Contract Act, 1872.

RTP, June 2023, Sim, ICAI Module

Ans - If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either, the law will allow appropriation of debts in order of time.

In the present case, Mr. Harish had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Harish that it will be against the bill of exact amount. Hence cheque of ` 9,680 will be appropriated against the bill of ` 9,680 which was due in May 2021.

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

Hence, Mr. Ashish can appropriate the same against the debt of ` 12,120 which was due in 2018 and balance against ` 5650 which was due in August 2020.

14 - Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.

i) Unit - 3

ii) J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J. 3)b)6m,MTP2,Dec2022

Ans - As per Section 56 of the Indian Contract Act, 1872 the subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under that section, one of which is the declaration of war subsequent to the contract made. In the instant case the contract when made between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of which the contract becomes void. Hence, K cannot file a suit against J for performance of the contract.

13 - Mr. Y is a devotee and wants to donate an elephant to the temple as a core part of ritual worship. He contacted Mr. X who wanted to sell his elephant. Mr. X contracted with Mr. Y to sell his elephant for ` 20 Lakhs. Both were unaware that the elephant was dead a day before the agreement. Referring to the provisions of the Indian Contract Act, 1872, explain whether it is a void, voidable or a valid contract. RTP,Dec2022

Ans - As per Section 2(j) of the Indian Contract Act, 1872 a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. The fact of impossibility may be known or unknown to the promisor or promisee.

It may be added by clarification here that the term "contract" shall be understood as an "agreement".

Thus, when the parties agree on doing something which is obviously impossible in itself the agreement would be void.

In this case, Mr. X and Mr. Y were ignorant of the fact that the elephant was dead and therefore the performance of the contract was impossible from the very start (impossibility ab initio).

Hence, this contract is void being not enforceable by law.

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

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

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

(c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhania allows him to perform without saying anything? RTP, June 2022

Ans - According to Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Therefore, in the instant case,

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

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

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

11 - Explain what is meant by 'Supervening Impossibility' as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility?

6)a)5m, MTP2, June 2023, 6)a)5m, MTP2, Dec 2022, 6)a)5m, MTP1, June 2022, 6)a)5m, June 2021

Ans - According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) subsequent impossibility.

Subsequent impossibility is also known as Supervening impossibility i.e. becomes impossible after entering into contract. When performance of promise becomes impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility.

Example: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

Effect of impossibility: The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

10 - What will be rights with the promisor in following cases under the Indian Contract Act, 1872? Explain with reasons:

(a) Sunil promised to bring back Jatin to life again.

(b) Aman agreed to sell 50 kgs of apples to Raman. The loaded truck left for delivery on 15th March but due to riots in between reached Raman on 19th March due to which the apples were rotten.

(c) An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.

(d) Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned.

RTP, Sept2024, RTP, June2021, ICAI Module

Ans - (a) The contract is void because of its initial impossibility of performance.

(b) Time is essence of this contract. By the time apples reached Raman, they were already rotten. The contract is discharged due to destruction of the subject matter of contract.

(c) Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.

(d) Such contract is discharged without performance because of subsequent illegality nature of the contract.

09 - Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R did not pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

1)a)i)2m,MDTP3, 1)a)i)2m,MTP2,June2024, 3)c)i)2m,Dec2020

Ans - As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed.

Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.

08 - "The basic rule is that the promisor must perform exactly what he has promised to perform." Explain stating the obligation of parties to contracts. RTP, June2020

Ans - Obligations of parties to contracts (Section 37 of the Indian Contract Act, 1872)

The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.

Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

Example 1 - A promises to deliver goods to B on a certain day on payment of ` 1,00,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ` 1,00,000 to A's representatives.

Example 2 - A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B because it involves use of personal skill.

Analysis of Section 37

A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.

The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in Section 37. Thus, it is the primary duty of each party to a contract to either perform or offer to perform his promise. He is absolved from such a responsibility only when under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

Thus, from above it can be drawn that performance may be actual or offer to perform.

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

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

Discuss in light of the Indian Contract Act, 1872?

- i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?**
- ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?**

3)c)6m, June 2019, Sim, ICAI Module

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

- i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.**
- ii) According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.**

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

06 - X, Y and Z jointly borrowed ` 1,50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

- a) Y can recover the contribution from X and Z,
- b) Legal representatives of X are liable in case of death of X,
- c) Y can recover the contribution from the assets, in case Z becomes insolvent.

1)i)4m, MTP1, Dec2020, RTP, Dec2019, Sim, ICAI Module

Ans - 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 from 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 promisors, 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 contract). 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 X, Y and Z 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.

05 - Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2024, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly

within a period of 10 days of the contract. Mr. Vikas also paid an amount of ₹ 70,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2024 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2024 for which Mr. Vikas did not agree. On 1st August, 2024, Mr. Gaurav claimed compensation of ₹ 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ₹ 70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention.

4)a)i)4m,MDTP6, 4)a)i)4m,MTP2,Sept2024, 3)b)6m,MTP2,June2021,
3)b)6m,MTP1,June2019, 1)a)4m,Dec2018

Ans - Subsequent or Supervening impossibility (Becomes impossible after entering into contract): When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.

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

In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. Gaurav has to pay back the amount of ₹ 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Vikas is correct.

04 - Enumerate the persons by whom a contract may be performed under the provisions of the Indian Contract Act, 1872. 2)a)7m,MTP2,Dec2018

Ans - As per section 40 of the Indian Contract Act, 1872, the promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

i) Promisor himself: If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or

diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

ii) Agent: Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

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

iv) Third persons: As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

v) Joint promisors: When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfill the promise jointly.

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

Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period.

1)a)4m,MTP1,Dec2018, ICAI Module

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

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

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

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

02 - Krish, Kanya and Ketan are partners in a firm. They jointly promised to pay Rs. 6,00,000 to Dia. Kanya become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.

1)a)4m,MTP2,June2019, 1)a)4m,June2018

OR

A, B, C and D are the four partners in a firm. They jointly promised to pay ` 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only ` 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872.

1)a)4m,MTP2,Dec2022, 1)a)4m,Dec2021, RTP,Dec2018

Ans - Joint promisors (Section 42 of the Indian Contract Act, 1872)

When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise.

Any one of joint promisors may be compelled to perform (Section 43)

As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

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

In the instant case, Krish, Kamyra and Ketan jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount. Krish is entitled to receive Rs. 40,000 from Kamyra's estate, and Rs. 2,80,000 from Ketan.

OR

In the instant case, A, B, C and D have jointly promised to pay ` 6,00,000 to F. B and C become insolvent. B was unable to pay any amount and C could pay only ` 50,000. A is compelled to pay the whole amount to F.

Hence, A is entitled to receive ` 50,000 from C and ` 2,75,000 from D, as worked out below:

From C ` 50,000 = (C's Liability ` 1,50,000 Less: Amount he could not pay ` 1,00,000).

From D ` 2,75,000 = (D's Liability ` 1,50,000 + 1/2 of liability of B (Loss) $(1,50,000 \times 1/2)$ i.e. ` 75,000 + 1/2 of C's liability (Loss) $(1,00,000 \times 1/2)$ i.e., ` 50,000) In other words, equal proportion i.e., ` 5,50,000 (i.e. ` 6,00,000 - ` 50,000) / 2.

Thus, total amount A can receive from C and D comes to ` 3,25,000 (50,000 + 2,75,000)

Q1 - A received certain goods from B promising to pay ` 1,00,000. Later on, A expressed his inability to make payment. C, who is known to A, pays ` 60,000 to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of ` 1,00,000. Discuss whether the contention of B is right? RTP, June 2018

Ans - As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorized nor ratified the act of the third party. Therefore, in the present instance, B can sue only for the balance amount i.e. ` 40,000 and not for the whole amount.

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