

CA Foundation

Paper 2 - Business Law

Chapter 2 - ICA

The Indian Contract Act, 1872

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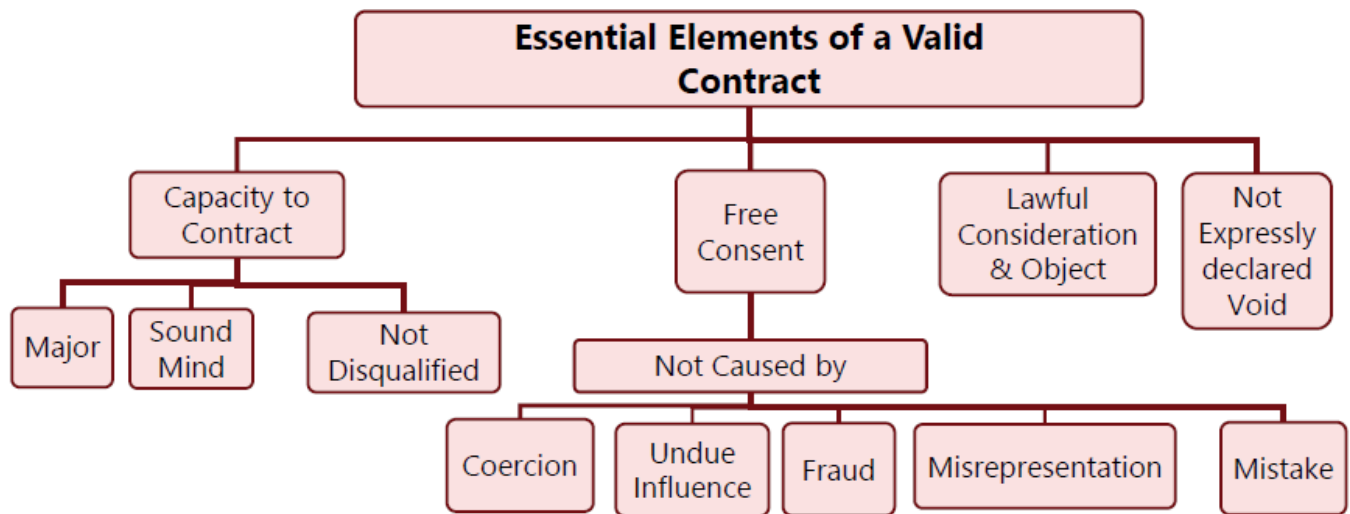
The Indian Contract Act, 1872

Unit 3 - Other Essential Elements of Contract

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Unit 3 - Other Essential Elements of a Contract



CAPACITY TO CONTRACT

Capacity refers to the competence of the parties to make a contract. It is one of the essential elements to form a valid contract.

11 - Who is competent to contract -

Every person is competent to contract who-

- A. has attained the **age of majority**,
- B. is of **sound mind** and
- C. is **not disqualified** from contracting **by any law** to which he is subject.

A. Age of Majority:

LAW RELATING TO MINOR'S AGREEMENT/POSITION OF MINOR

- A person domiciled in India attains majority upon completing 18 years of age

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A person less than that age even by a day would be minor for the purpose of contracting.		
S.No.	LAW OR CONCEPT	EXPLANATION
1	Position of Minor in Contracts	A contract with or by a minor is void ab initio (invalid from the beginning).
	<i>Mohori Bibi vs. Dharmo Das Ghose (1903): A minor's mortgage contract was held void; minor not liable to pay.</i>	
2	No ratification after attaining majority	A minor cannot ratify a contract made during minority after attaining majority.
	<i>Example 1 : Minor cannot ratify a promissory note made during minority, and any new note made after majority is also void.</i>	
3	Minor as Beneficiary	- Nothing in the Contract Act prevents him from making the other party bound to the minor. - A promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit. - A minor cannot become a partner in a partnership firm. However, he may, with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932)
		<i>Example 2: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.</i>
4	Pleading Minority	A minor can plead minority even if they entered into a contract by falsely representing themselves as a major.

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5		Rule of estoppel cannot be applied against a minor. It means he can be allowed to plead his minority in defence.
		Example 3 : A minor who falsely took a loan (induced himself as major) cannot be held liable, but if the money is unspent, it may be recoverable but the minor shall not be liable for any amount which he has already spent even though he received the same by fraud.
	Liability for Necessaries	Section 68 - Necessaries supplied to a minor can be recovered, but only from the minor's property, not personally. For a minor's estate to be liable for necessities - - The goods must be essential for the minor's support, based on their standard of living. - The minor should not already have a sufficient supply of these goods. - Necessaries refer to basic needs like food, clothing, education, or expenses related to important life events, such as funerals. Luxuries or non-essential items are excluded. The focus is on utility, not extravagance.
		★ <i>Expenses on minor's education, on funeral ceremonies come within the scope of the word 'necessaries'.</i> ★ <i>The whole question turns upon the minor's status in life. Utility rather than ornament is the criterion</i>
		Example 4: Shruti being a minor purchased a laptop for her online classes of Rs. 70,000 on credit from a shop. But her assets could pay only Rs. 20,000. The shop keeper could not hold Shruti personally liable and could recover only amount recoverable

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		<i>through her assets i.e. upto Rs. 20,000.</i>
6	Contract by Guardian	A minor's agreement is void, but a guardian can make a valid contract on behalf of the minor if - • The guardian is acting within their authority. • The contract benefits the minor. • However, not all guardian-made contracts are valid. For example, a guardian cannot bind the minor in a contract to buy immovable property. • But, if a certified guardian (appointed by the court) enters into a contract to sell the minor's property with court approval, the contract can be enforced by either party.
7	No specific performance	A minor's agreement being absolutely void, there can be no question of the specific performance of such an agreement.
8	No insolvency	A minor cannot be declared insolvent since they are not personally liable for debts
9	Minor can be an agent	A minor can act as an agent but is not personally liable for their acts
	<i>Example 5 - A minor can operate a bank account and draw cheques, but is not liable for bounced cheques</i>	
10	Minor cannot bind parent or guardian	A minor cannot bind their parent or guardian to a contract unless acting as

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		their agent
	Example 6 - A minor buying a scooty cannot hold their parents liable for payment without their knowledge or consent.	
11	Joint Contract by Minor and Adult	A minor cannot bind their parent or guardian to a contract unless acting as their agent
12	Surety for a Minor	An adult surety for a minor is liable for the contract if the minor defaults.
	Example 7 - Mr. X guarantees the purchase of a phone by Krish (a minor); if Krish fails to pay, Mr. X is liable.	
13	Minor as Shareholder	A minor cannot be a shareholder, but may acquire fully paid shares through their guardian.
14	Liability for torts	A minor is liable for torts (civil wrongs) unless the tort is essentially a breach of contract.
	Example - A minor lent a borrowed horse to a friend who killed it; minor was held liable	

B. 12 - Person of sound mind:

- A person is said to be of sound mind for purpose of making a contract if -
- At the time when he makes it -
 - is capable of understanding it and
 - of forming a rational judgement as to its effect upon his interests.

Position of unsound mind person making a contract:

A contract by a person who is not of sound mind is **void**.

USUALLY OF	OCCASIONALLY OF	CAN MAKE A CONTRACT ?
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Unsound mind	Sound mind	May make a contract when he is of sound mind
Sound mind	Unsound mind	May NOT make a contract when he is of unsound mind.

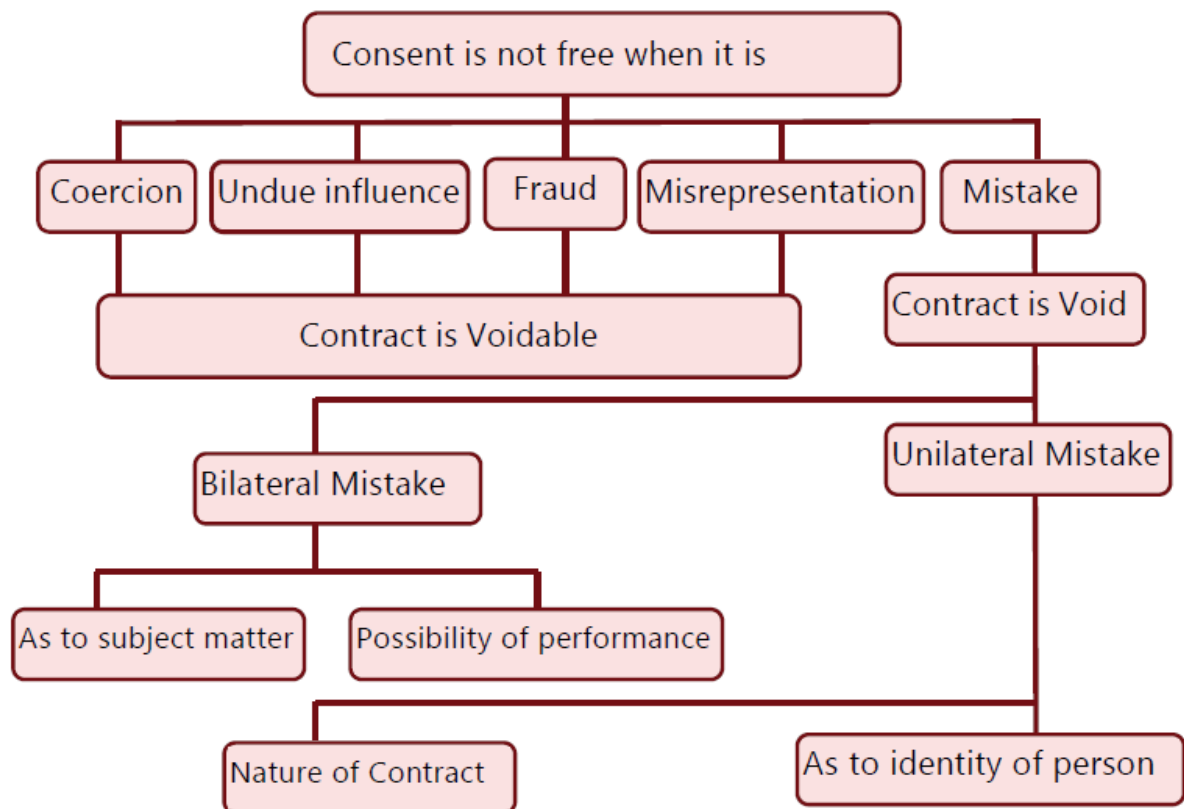
Example 8: A patient in a lunatic asylum, who is at intervals, of sound mind, may contract during those intervals.

Example 9: A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

C. Contract by disqualified persons -

- Besides minors and persons of unsound mind,
- there are also other persons who are disqualified from contracting,
- partially or wholly,
- the contracts by such persons are void.
- Incompetency to contract may arise from -
 - political status,
 - corporate status,
 - legal status, etc.
- The following persons fall in this category: Foreign Sovereigns and Ambassadors, Alien enemy, Corporations, Convicts, Insolvent etc.

FREE CONSENT



13 - Definition of Consent

Two or more persons are said to consent when they agree upon the same thing in the same sense

- Consent means both parties agree to the same thing in the same sense.

The same thing in the same sense. Same thing must be understood as the whole content of the agreement.

- **Fundamental Errors :**

No consent exists if parties make an error regarding:

- The nature of the transaction.
- The person involved.
- The subject matter of the agreement.

- **Example :** If two parties enter into a contract about a person or ship, but

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each has a different person or ship in mind due to a similar name, no contract exists because they were not “ad idem” (of the same mind).

- **Ambiguity Terms or Mistake**
 - If the terms are unclear or there's an error about the transaction or subject matter, consent may be absent.
 - In case of fundamental error or mistake, real consent is missing.
- **Consent is essential for a contract and only free consent is necessary for the validity of a contract.**

14 - Definition of Free Consent

Consent is said to be free when it is NOT caused by:

1. **Coercion**, as defined in Section 15; or
2. **Undue Influence**, as defined in Section 16; or
3. **Fraud**, as defined in Section 17; or
4. **Misrepresentation**, as defined in Section 18 or
5. **Mistake** subject to the provisions of Sections 20, 21, and 22.

→ When consent to an agreement is caused by

- ◆ coercion, fraud, misrepresentation, or undue influence,
- ◆ the agreement is a contract voidable at the option of the party
- ◆ whose consent was so caused

→ When the consent is vitiated by mistake, the contract becomes void.

ELEMENTS VITIATING FREE CONSENT

15 - Coercion	
Definition of Coercion	Committing or threatening to commit any act forbidden by the Indian Penal Code or unlawfully detaining property to compel someone to enter into an agreement.
Source of Coercion	Coercion can come from any person, not necessarily a party to the contract.
Target of	Coercion can be directed at anyone, not just the

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Coercion	contracting party.
Effect on Contract (Section 19)	A contract induced by coercion is voidable at the option of the party whose consent was obtained by coercion.
Return of Benefits (Section 71)	Any money paid or property delivered under coercion must be returned or repaid by the person who received it.
<i>Example 10: Where husband obtained a release deed from his wife and son under a threat of committing suicide, the transaction was set aside on the ground of coercion, suicide being forbidden by the Indian Penal Code.</i> <i>Example 11: An agent refused to give books of accounts to the principal unless he frees him from all his liabilities. The principal had to give the release deed. Held, the contract was under coercion by unlawful detaining of the principal's property.</i>	

16 - Undue influence

A contract is said to be induced by 'undue influence' where -

- The relations subsisting between the parties are such that
- one of the parties is in a position to **dominate the will** of the other and
- he uses that position to obtain an **unfair advantage over the other**

Example 12: A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

The essential ingredients under this provision are:

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Relation Between the Parties	A person can influence another if there is a close relationship between them.
Position to Dominate the Will One party is in a position to dominate the will of the other due to:	
1	Real and Apparent Authority - Authority exists, e.g., master-servant, doctor-patient.
2	Fiduciary Relationship - Trust-based relations, e.g., father-son, solicitor-client, husband-wife.
3	Mental Distress - Consent given under mental or bodily distress, illness, or old age. Example: A doctor dominating a sick patient.
4	Unconscionable Bargains - If the contract appears unfair, it is presumed undue influence was used (e.g., money-lender with unfair loan terms).
<i>Example 17: A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.</i> <i>Example 18: A applies to a banker for a loan at a time when there is a stringency in 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.</i>	
Object to Take Undue Advantage	Influence must be used to unfairly benefit from the contract (e.g., spiritual guru promising salvation for property).
<i>Example 19: A teacher asks her daughter to get marry to one of his brilliant students. Both the girl and boy were smart, settled and intelligent. Here the teacher had a relation which can have influence on</i>	

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<i>both of them. But as no undue advantage of such influence was taken such contract of marriage is said to be made by free consent.</i>	
Burden of Proof - The influenced party must prove:	
1	The other party had power to dominate
2	The other party used undue influence
3	The transaction is unfair or unconscionable
Effect of Undue Influence (Section 19A)	The agreement is a contract voidable at the option of the party whose consent was so caused
<i>Example 20: A, a money lender advances Rs. 1,00,000 to B, an agriculturist, and by undue influence induces B to execute a bond for Rs. 2,00,000 with interest at 6% per month. The court may set aside the bond, ordering B to repay `1,00,000 with such interest as may seem just.</i>	

17 - FRAUD

Means and includes any of the following acts -

- Committed by a party to a contract, or
- with his connivance, or
- by his agent,
- with an intent to deceive another party thereto or his agent, or to induce him
- to enter into the contract -
 1. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
 2. the active concealment of a fact by one having knowledge or belief of the fact;
 3. a promise made without any intention of performing it;
 4. any other act fitted to deceive;
 5. any such act or omission as the law specially declares to be

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fraudulent.

The essential elements of Fraud under this provision are :	
Representation or Assertion	There must be a false representation or assertion. Silence may amount to fraud in certain cases (duty to speak or active concealment).
Silence as Fraud	Silence is fraud when:
1	Duty to Speak - When there is a relationship where it's obligatory to disclose information. <i>Example 21 : A sells a horse to B (his daughter) and hides its unsoundness (Fraud).</i>
2	Silence Equals to Speech - When silence creates a misleading impression. <i>Example 23 : A says goods cost Rs. 50,000 (fact), but says they're worth Rs. 50,000 (opinion).</i>
Representation Related to a Fact	Fraudulent statements must be about facts, not opinions.
<i>Example 24 : A who is about to sell goods says that goods cost him Rs. 50,000. This is statement of fact. But if he says the goods are worth Rs. 50,000, it is a statement of opinion.</i>	
Timing & Intent of Representation	The false statement must be made before the contract to induce the other party to act on it. Example: A misleading prospectus about a company's director.
Knowledge of Falsity or Recklessness	The party making the representation must know it's false, or be reckless about its truth.
Inducement to Act	The false representation must have induced the other party to act. Example: A false statement about a director

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	was irrelevant to A's decision to buy shares.
<i>Example 25: 'A' bought shares in a company on the faith of a prospectus which contained an untrue statement that 'B' was a director of the company. 'A' had never heard of 'B' and, therefore, the statement was immaterial from his point of view. A's claim for damages in this case was dismissed because the untrue statement had not induced 'A' to buy the shares.</i>	
Reliance on Representation	The party must rely on the representation and be deceived by it.
Loss Due to Fraud	The deceived party must suffer a loss as a result of the fraudulent statement.
Effect on Contract Fraud renders the contract voidable at the option of the defrauded party.	
Remedies for Fraud - The defrauded party can -	
1. Rescind the contract - Cancel the contract within a reasonable time.	
2. Sue for Damages - Claim compensation for losses suffered.	
3. Insist on Performance - Demand contract fulfillment, ensuring they are put in the position they would have been if the representation was true.	
Exceptions (When Contract is Not Voidable) - Contract not voidable if:	
1. Ordinary Diligence Could Discover the Truth - If the defrauded party could have discovered the truth through ordinary care.	
2. Fraud Did Not Cause Consent - If the fraudulent statement did not lead the party to consent to the agreement.	

18 - Misrepresentation

Situations Leading to Misrepresentation:

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- **False Statement of Fact**
 - If a person makes a false statement believing it to be true, but the information they have doesn't justify their belief, it's misrepresentation.
- **Breach of Duty Without Intent to Deceive**
 - When someone breaches a duty unintentionally but gains an advantage from it, it can still be misrepresentation.
- **Innocent Mistake About Subject Matter**
 - If one party unintentionally causes the other party to misunderstand the subject matter of the contract, it's also considered misrepresentation.

Example 26:

A tells B that C will become a director of a company, based on second-hand information from M. B buys shares based on A's statement, which turns out to be false. This is misrepresentation because A shouldn't have made a firm statement based on unreliable information.

Example 27:

A tells B that his motorcycle is in excellent condition, without getting it checked. B buys the motorcycle, but the engine turns out to be defective. This is misrepresentation as A's statement was false.

Example 28:

A sells a mare to B, claiming it is in perfect health, genuinely believing it but without enough reason. Later, B finds the mare is unsound. A's statement is misrepresentation due to lack of proper knowledge.

Example 29:

A buys an item thinking it's worth ₹1000 but it's actually worth ₹500. Since the seller didn't misrepresent anything, the contract is valid.

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Distinction between Coercion and Undue Influence:

Basis of difference	Coercion	Undue Influence
Nature of action	It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will.	It involves moral or mental pressure.
Involvement of criminal action	It involves committing or threatening to commit and act forbidden by Indian Penal Code or detaining or	No such illegal act is committed or a threat is given.

Distinction between fraud and misrepresentation:

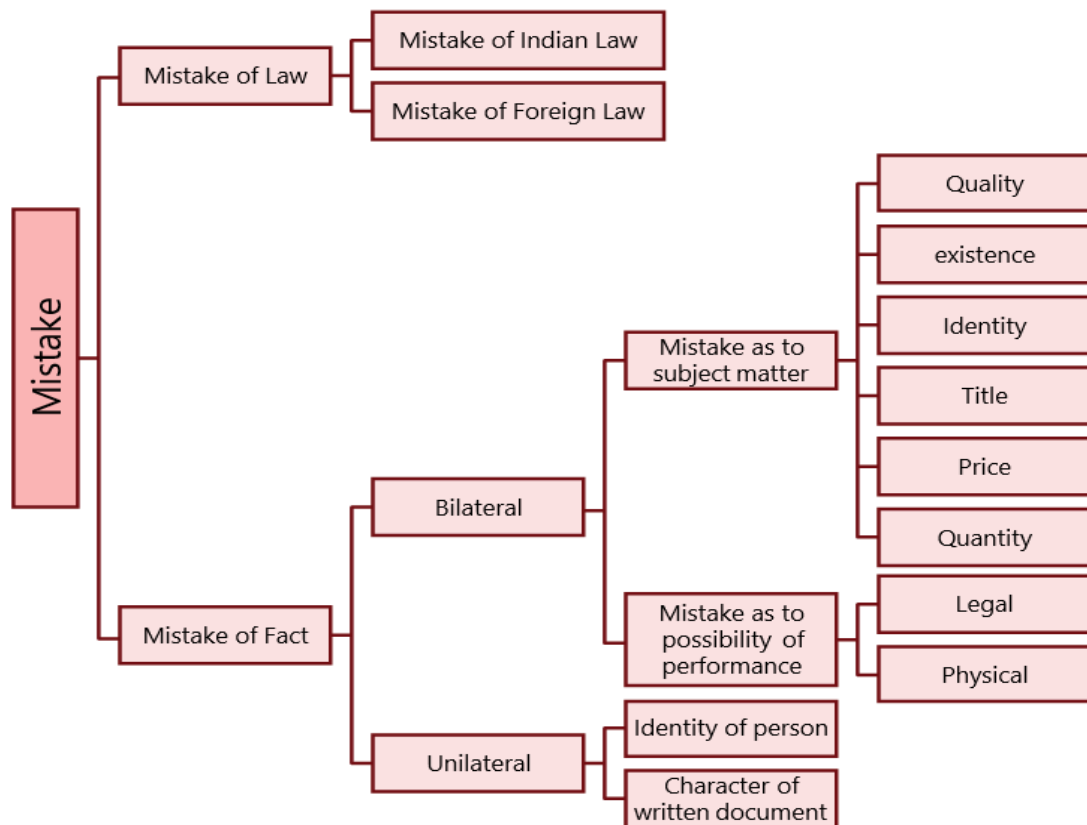
Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

Mistake

Innocent or erroneous belief which leads the party to misunderstand the others

–>> (Mistake of Law or mistake of Fact)

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MISTAKE				
Type of Mistake	Sub Types	Explanation	Examples	Effect on Contract
MISTAKE OF	Indian Law	A person cannot claim relief for an act done in ignorance of Indian law.	Example 30: A and B enter a contract, mistakenly thinking a debt is barred by limitation law. Contract is valid.	Contract is not voidable.
	Foreign Law	Treated as a mistake of fact. Ignorance of	N/A	Treated like a mistake of fact.

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MISTAKE				
Type of Mistake	Sub Types	Explanation	Examples	Effect on Contract
L A W		foreign law is considered a mistake of fact, and the agreement is void.		
M I S T A K E O F F A C T	Bilateral Mistake 20	Both parties are mistaken about a fact essential to the agreement.	Mistake towards the subject matter about - • Quality, • Existenc • Identity, • Title, • Price, or • Quantity	Contract is void.
	Unilateral Mistake 22	Only one party is mistaken about a fact.	One party believes something incorrect but the other party does not.	Contract is not voidable (Section 22).

LEGALITY OF OBJECT AND CONSIDERATION

23 - In these cases the consideration or object of an agreement is said to be UNLAWFUL:

1. When consideration or object is forbidden by law:

- Acts forbidden by law are those
- which are punishable under any statute as well as
- those prohibited by regulations or orders made in exercise of the authority conferred by the legislature.

Example 31: A father had arranged for marriage of his 17 years boy

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and took dowry from the girl's parents. Such marriage contract cannot take place as in India the minimum age for boy marriage is 21 years and dowry is not permissible in Indian law. Such is not a valid contract as the consideration and object both are forbidden by law.

2. When consideration or object defeats the provision of law:

- If the consideration or the object of an agreement
- is of such a nature that not **directly but indirectly**,
- it would defeat the provisions of the law,
- the agreement is **void**.

Example 32: A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

3. When it is fraudulent:

- **Agreements which are entered into to promote fraud are void.**

Example 33: A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object, viz., acquisition of gains by fraud is unlawful.

4. When consideration involves injury to the person or property of another:

- **The general term 'injury' means criminal or wrongful harm.**
- In the following examples,
- the object or consideration is unlawful
- as it involves injury to the person or property of another.

Example 34: An agreement to print a book in violation of another's copyright is void, as the object is to cause injury to the property of another. It is also void as the object of the agreement is forbidden by the law relating to copyright.

Example 35: A promises to repay his debt by doing manual labour daily for a special period and agrees to pay interest at an exorbitant rate in case of default. Here A's promise to repay by manual labour is the consideration for the loan, and this consideration is illegal as it imposes what, in substance, amounts to slavery on the part of A. In other words, as the consideration involves injury to the person of A, the consideration is illegal. Here, the object too is illegal, as it seeks to impose slavery which is opposed to public policy. Hence, the agreement is void.

5. When consideration is immoral:

- The following are the examples of agreements
- where the object or consideration is unlawful,
- Being immoral.

Example 36: Where P had advanced money to D, a married woman to enable her to obtain a divorce from her husband and D had agreed to marry him as soon as she could obtain the divorce, it was held that P was not entitled to recover the amount, since the agreement had for its object the divorce of D from her husband and the promise of marriage given under these circumstances was against good morals.

Example 37: A asks B, "If you arrange a girl for marriage with me, I will give Rs. 50,000." Here contract is void as it is immoral.

6. When consideration is opposed to public policy:

- The expression 'public policy' can be interpreted
- either in a wide or in a narrow sense.
- The freedom to contract may become illusory,
- unless the scope of 'public policy' is restricted.

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- In the name of public policy,
- freedom of contract is restricted by law only
- for the good for the community.

AGREEMENTS OPPOSED TO PUBLIC POLICY		
TYPE	Description	Example
Trading with Enemy	Agreements with a person affiliated with a country at war with India are void, as they compromise national security.	Example 38 - India faces a war-like situation with China. Mr. A enters a contract with China for toy imports. The contract is void as China is considered an enemy state.
Stifling Prosecution	Agreements to prevent legal proceedings from following their normal course are void. They hinder the administration of justice and are considered illegal unless the offence is compoundable.	A agrees to sell land to B in exchange for B dropping criminal charges against A for a compoundable offence. This agreement is legal, but if the offence were non-compoundable, it would be void.
Maintenance & Champerty	Maintenance involves funding someone's lawsuit with no interest, while champerty is funding in exchange for a share of the proceeds. These agreements are void if motivated by malice or injustice.	Example 39 - A offers B ₹2000 to sue C just to annoy C, despite the issue being solvable mutually. This is a maintenance agreement and is void. Example 40 - A agrees to pay expenses to B if he sues C and B agrees to pay half of the amount received from result of such suit. This is an agreement of

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AGREEMENTS OPPOSED TO PUBLIC POLICY		
TYPE	Description	Example
		champerty.
The agreement for supplying funds by way of Maintenance or Champerty is valid unless - - It is unreasonable so as to be unjust to other party or - It is made by a malicious motive like that of gambling in litigation or oppressing other parties by encouraging unrighteous suits and not with the bonafide object of assisting a claim believed to be just.		
Trafficking in Public Offices	Agreements involving the sale of public offices or appointments are void, as they corrupt public service and undermine the merit system.	Example 41 - Harish pays ₹15,000 to an officer to secure a job for his son in the Forest Department. The contract is void as it involves trafficking in public office.
Creating Monopolies	Agreements intended to create monopolies or control market prices are void, as they harm public interest and fair competition.	Example 42 - XYZ and ABC, the only oxygen cylinder manufacturers in West Bengal, enter into a contract to supply at high rates during the COVID-19 crisis, intending to create a monopoly. This contract is void.
Marriage Brokerage	Contracts that involve paying someone to arrange or negotiate a marriage are void as they violate public policy.	A offers B ₹50,000 to arrange a marriage. The contract is void as it involves marriage brokerage, which is opposed to public policy.
Interference with Justice	Agreements to induce judicial or executive officers to act corruptly or partially are void, as they interfere	A agrees to pay B, a witness in a trial against A, to stay absent from the trial. This contract is void

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AGREEMENTS OPPOSED TO PUBLIC POLICY		
TYPE	Description	Example
	with the justice system and governance.	due to interference with the justice system.
Interest Against Obligation	Contracts creating personal interest contrary to one's duty or obligations are void.	A manager agrees to pass a contract to X if X pays him ₹2,00,000 privately. This agreement is void as it creates a personal interest against the manager's obligation to the company.
Consideration Unlawful in Part	If any part of the consideration is unlawful, the entire agreement is void unless the illegal part can be severed.	A agrees to sell land to B, but part of the consideration involves illegal activities. If the illegal part cannot be separated, the entire contract is void.

VOID AGREEMENTS

VOID AGREEMENTS	
Section	Title
26	Agreement in restraint of marriage
27	Agreement in restraint of trade
28	Agreement in restraint of legal proceedings
29	Default in Reciprocal Promises (It's Effect)
30	Failure to Perform on Time When Time is Essential

26 - Agreement in restraint of marriage

- Every agreement in restraint of marriage of any person
- other than a minor, is void.

- So if a person, being a major,
- agrees for good consideration not to marry,
- the promise is not binding and considered as void agreement

27 - Agreement in restraint of trade

General Rule: Agreements in Restraint of Trade are Void -

Any agreement that restrains a person from practicing a lawful profession, trade, or business is void.

❖ Exception 1: Sale of Goodwill

- **Goodwill Definition:** The advantage a business gains from its public reputation and loyal customers.
- **Valid Agreement:** When a person sells the goodwill of a business, they can agree not to start a similar business within reasonable local limits.
- **Condition:** The restriction is valid as long as the buyer or their successors continue the same business within the agreed local area.

❖ Exception 2: Outgoing Partner in a Firm (Indian Partnership Act, 1932)

- **Section 36:** An outgoing partner can agree with continuing partners not to start a similar business within a specified area or time period.
- **Reasonable Restrictions:** This agreement is valid only if the time and local limits are reasonable.

❖ Exception 3: Competing Business Between Partners

- **Section 11 (Indian Partnership Act, 1932):** Partners can agree not to run a competing business while the partnership is active. This restriction is valid.

❖ Employee Agreements Not in Restraint of Trade

- **Service Agreements:** An employee agreeing not to compete with the employer during the term of employment is not considered restraint of trade and is valid.

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Example 43: B, a physician and surgeon, employs A as an assistant for a term of three years and A agrees not to practice as a surgeon and physician during these three years. The agreement is valid and A can be restrained by an injunction if he starts independent practice during this period.

Example 44: An agreement by a manufacturer to sell during a certain period his entire production to a wholesale merchant is not in restraint of trade.

Example 45: Agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price to maintain the quality of the product, is not an agreement in restraint of trade.

28 - Agreement in restraint of legal proceedings

General Rule: Contracts Restricting Legal Rights are Void

Invalid Contracts: Any contract that completely prevents a party from enforcing their rights through the court or shortens the usual time to start legal action is void.

❖ Exceptions to the Rule:

- **Arbitration Agreement:** A contract where parties agree to resolve disputes through arbitration is valid. Only the amount awarded in arbitration can be recovered.
- **Future Arbitration Clause:** A written agreement to refer future or existing disputes to arbitration is also valid.

29 - Agreement the meaning of which is uncertain

- An agreement,
- the meaning of which is **not certain**,
- **is void**,
- but where the meaning thereof is capable of **being made certain**,
- the agreement **is valid**.

Example 46: A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.

30 - Wagering agreement

- An agreement by way of a wager is void.
- It is an agreement involving payment of a sum of money upon the determination of an uncertain event.
- The essence of a wager is that -
- Each side should stand to win or lose, depending on the way an uncertain event takes place
- in reference to which the chance is taken and
- in the occurrence of which neither of the parties has legitimate interest.

Example 47: A agrees to pay Rs. 50,000 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager. But if one of the parties has control over the event, agreement is not a wager.

Essentials of a Wager

1	Promise of Payment	There must be a promise to pay money or something of value
2	Conditional Event	The promise depends on whether a specific event happens or not.
3	Uncertainty	The event's outcome must be uncertain
4	Two Parties	There must be two parties, each standing to win or lose

2.3 ► Other Essential Elements of a Contract

5	Intention to Bet	Both parties must intend to bet when making the agreement
6	No Other Interest	The parties should have no interest in the event except for the money at stake

Transactions similar to Wager (Gambling)		
Transaction Type	Description	Nature & Legality
Lottery Transactions	A game of chance where participants gamble by purchasing tickets with a chance to win a prize.	Considered a wager. Even if sanctioned by the Government, lotteries are illegal under Section 294A of the Indian Penal Code.
Crossword Puzzles & Competitions	Prizes are awarded based on the match between a participant's solution and a pre-prepared solution.	Considered a lottery and wagering transaction, as it relies on chance rather than skill.
Speculative Transactions	Agreements to settle differences between the contract price and market price of goods or shares without actual delivery of goods or shares.	Gambling in nature. These speculative transactions are void because they are based on price differences rather than real trade.
Horse Race Transactions	Betting on horse races, with a prize awarded to the winner based on the race outcome.	Example 48: A and B enter into an agreement in which A promises to pay Rs. 2,00,000 provided 'Chetak' wins the horse race competition. This is not a wagering transaction.
	Considered a wager if the prize is less than ₹500.	
	However, Section 30 is not applicable in an agreement to contribute toward plate, prize or sum of money of	

Other Essential Elements of a Contract ◀ 2.3

Transactions similar to Wager (Gambling)		
Transaction Type	Description	Nature & Legality
	the value of Rs. 5,00,000 or above to be awarded to the winner of a horse race.	

Transactions resembling with wagering transaction but are not void		
Transaction	Description	Why it is not a Wager
Chit Fund	A group of individuals contribute a fixed sum for a specified period, and the collected amount is awarded to the lucky winner of a draw at the end of each cycle.	Chit funds are not wagers because they involve mutual contributions for savings and do not depend solely on chance.
Commercial or Share Market Transactions	Transactions involving the purchase or sale of goods or shares, where delivery is intended.	These are not wagers as they involve real transactions and the actual transfer of goods or shares, rather than gambling.
Games of Skill and Athletic Competitions	Competitions like crossword puzzles or athletic events where prizes are awarded based on skill, intelligence, or ability.	These involve skill rather than chance, and are valid under the Prize Competition Act, 1955, as long as prize money $\leq$ ₹1,000.
Contract of Insurance	Insurance contracts provide financial protection against contingencies (e.g., life, health, property) and involve the payment of premiums in exchange for compensation upon certain events.	Insurance contracts are considered contingent contracts, not wagers, as they protect against risk rather than depend on luck.

2.3 ► Other Essential Elements of a Contract

Distinction between Contract of Insurance and Wagering Agreement

	Basis	Contracts of Insurance	Wagering Agreement
1.	Meaning	It is a contract to indemnify the loss.	It is a promise to pay money or money's worth on the happening or non- happening of an uncertain event.
2.	Consideration	The crux of insurance contract is the mutual consideration (premium and compensation amount).	There is no consideration between the two parties. There is just gambling for money.
3.	Insurable Interest	Insured party has insurable interest in the life or property sought to be insured.	There is no property in case of wagering agreement. There is betting on other's life and properties.
4.	Contract of Indemnity	Except life insurance, the contract of insurance indemnifies the insured person against loss.	Loser has to pay the fixed amount on the happening of uncertain event.
5.	Enforceability	It is valid and enforceable	It is void and unenforceable agreement.

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“ PROBLEM KYA HAI ? - Unit 3 ”

Question Bank *ICA*

*This section is complied with questions and suggested answers
for the chapter - ICA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

"An agreement, the meaning of which is not certain, is void". Discuss.

(Module)

Answer 1

Agreement - the meaning of which is uncertain (Section 29): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid. For example, A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.

Question 2

"Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss.

(Module)

Answer 2

Minor can be a beneficiary or can take benefit out of a contract: Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.

Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit. A minor cannot become a partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

Example: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

Question 3

A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination. Accordingly, the car was sold. However, the father of the student persuaded him to sue his teacher. State whether the student can sue the teacher?

(Module)

Answer 3

Yes, A can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872.

According to section 16 of the Indian Contract Act, 1872, "A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other".

A person is deemed to be in position to dominate the will of another:

- a. Where he holds a real or apparent authority over the other; or
- b. Where he stands in a fiduciary relationship to the other; or
- c. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.

A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

Question 4

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 few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons whether Suraj can rescind the contract?

(Module)

Answer 4

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

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.

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

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.

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.

Question 5

Mr. SAMANT owned a motor car. He approached Mr. CHHOTU and offered to sell his motor car for 3,00,000. Mr. SAMANT told Mr. CHHOTU that the motor car is running at the rate of 30 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. CHHOTU agreed with the proposal of Mr. SAMANT and took delivery of the car by paying 7 3,00,000/- to Mr. SAMANT. After 10 days, Mr. CHHOTU came back with the car and stated that the claim made by Mr. SAMANT regarding fuel efficiency was not correct and therefore there was a case of misrepresentation. Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. CHHOTU can rescind the contract in the above ground.

(Module)

Answer 5

As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract in the above ground.

Question 6

Ishaan, aged 16 years, was studying in an engineering college. On 1st March, 2018 he took a loan of R 2 lakhs from Vishal for the payment of his college fee and agreed to pay by 30th May, 2019. Ishaan possesses assets worth & 15 lakhs. On due date Ishaan fails to pay back the loan to Vishal. Vishal now wants to recover the loan from Ishaan out of his assets. Decide whether Vishal would succeed referring to the provisions of the Indian Contract Act, 1872.

(Module)

Answer 6

According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Ishaan who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmo Das Ghose 1903].

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessities of life to him. It says that though minor is not personally liable to pay the price of necessities supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessities suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. Thus, according to the above provision,

Vishal will be entitled to recover the amount of loan given to Ishaan for payment of the college fees from the property of the minor.

RTP, MTP & PYP Questions

Question 1

A enters into a contract with B that he (A) sells his house for \$ 10,00,000 to B. Further they both signed an agreement that if B uses the house for gambling purposes, then B shall pay A \$ 50,000 for it. B agreed to this, however after a year of sale, B started gambling business in that house. Can A claim Rs. 50,000 from B? Discuss with reference to the provisions of Indian Contract Act, 1872.

(RTP May 22)

Answer 1

According to Section 24 of the Indian Contract Act, 1872, in an agreement, where some part of the object is legal and the other part is illegal, the question arises about the validity and enforceability of such agreements. Where the legal and illegal part can be severed and divided, and separated, lawful part of object is enforceable, and the unlawful part of the object is void.

In the given case, A sells the house to B, is a valid transaction as the sale of house and consideration paid for the same i.e. 10,00,000 is valid and enforceable. However, the agreement to pay \$ 50,000 for gambling done in the house is illegal and thus void.

Hence, in the instant case, sale of house agreement is valid agreement and gambling agreement is illegal and not enforceable by law.

Question 2

Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was R 300. The doctor agreed to treat him but on the condition that Chandan had to sign a promissory note of \$ 5000 payable to doctor. Chandan signed the promissory note and gave it to doctor. On recovering from the disease, Chandan refused to honour the promissory note. State with reasons, can doctor recover the amount of promissory note under the provisions of the Indian Contract Act, 1872?

(RTP May 22)

Answer 2

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

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

Further, a person is deemed to be in a position to dominate the will of another -

- a. where he holds a real or apparent authority over the other, or
- b. where he stands in a fiduciary relation to the other; or
- c. where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Section 19A provides that when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

From the facts of the case, Chandan signed the promissory note under undue influence applied by doctor. Hence, Dr. Jhunjhunwala cannot recover the amount of promissory note but can claim his normal consultation fee from Chandan.

Question 3

In the light of the provisions of the Indian Contract Act, 1872, answer the following: A student was induced by his teacher to sell his brand-new bike to the latter at a price less than the purchase price to secure more marks in the examination. Accordingly, the bike was sold. However, the father of the student persuaded him to sue his teacher. Whether the student can sue the teacher? If yes, on what grounds?

(RTP Nov'22)

Answer 3

A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused. The relation of teacher and student is as such that the teacher is in a position to dominate the will of the student. As a result, the consent of the student

is caused by an undue influence. Hence, the contract between them is voidable at the option of the student, and therefore, he can sue the teacher.

Question 4

"Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss.

(RTP Nov'22)

Answer 4

Minor can be a beneficiary or can take benefit out of a contract. Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.

Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit. A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership. (Section 30 of the Indian Partnership Act, 1932).

Question 5

Mr. Mukund wants to sell his car. For this purpose, he appoints Mr. Parth, a minor as his agent. Mr. Mukund instructs Mr. Parth that car should not be sold at price less than Rs. 2,00,000. Mr. Parth ignores the instruction of Mr. Mukund and sells the car to Mr. Naman for Rs. 1,50,000. Explain the legal position of contract under Indian Contract Act, 1872 whether:

- Mr. Mukund can recover the loss of Rs. 50,000 from Mr. Parth?
- Mr. Mukund can recover his car from Mr. Naman?

(RTP May 23)

Answer 5

According to the provisions of Section 11 of Indian Contract Act, 1872, a minor is disqualified from contracting. A contract with minor is void-ab-initio but minor can act as an agent. But he will not be liable to his principal for his acts.

In the instant case, Mr. Mukund appoints Mr. Parth, a minor as his agent to sale his car. Mr. Mukund clearly instructed to Mr. Parth that the minimum sale price of the car should be Rs. 2,00,000 yet Mr. Parth sold the car to Mr. Naman for Rs. 1,50,000.

- Considering the facts, although the contract between Mr. Mukund and Mr. Parth is valid, Mr. Parth will not be liable to his principal for his acts. Hence, Mr. Mukund cannot recover the loss of Rs. 50,000.

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

- b. Further, Mr. Naman purchased the car from agent of Mr. Mukund, he got good title. Hence, Mr. Mukund cannot recover his car from Mr. Naman.

Question 6

Mukesh is running a grocery store in Delhi. He sells his grocery business, including goodwill worth \$1,00,000 to Rohit for a sum of \$ 5,00,000. After the sale of goodwill, Rohit made an agreement with Mukesh. As per this agreement, Mukesh cannot open another grocery store (similar kind of business) in the whole of India for next ten years. However, Mukesh opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Mukesh with reference to Indian Contract Act, 1872?

(RTP May'23)

Answer 6

According to Section 27 of the Indian Contract Act, 1872, any agreement that restrains a person from carrying on a lawful trade, profession or business is a void agreement. However, there are certain exceptions to this rule. One of the statutory exceptions includes sale of Goodwill. The restraint as to sale of goodwill would be a valid restraint provided -

1. Where the restraint is to refrain from carrying on a similar business,
2. The restraint should be within the specified local limits,
3. The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price,
4. The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court.

In the given case, Mukesh has sold the goodwill and there is restraint for not carrying on the same business of grocery store. However, the restriction imposed on Mukesh is unreasonable as he cannot carry similar business in whole of India for next 10 years. The restriction on restraint to similar kind of trade should be reasonable to make it a valid agreement.

Hence, Rohit cannot take any legal action against Mukesh as the restriction is unreasonable as per Section 27 of Indian Contract Act, 1872. Hence, the agreement made between in restraint of trade between Mukesh and Rohit is void agreement.

Question 7

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

Paridhee, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Mittal, owner of MP Laptops, for purchase of Laptop on credit amounting Rs. 60,000/- on 1st August 2022. She promised to pay back the outstanding amount with interest @ 16% p.a. by 31st July

2023. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Paridhee was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.

She will be a major on 1st January 2025 and only after that agreement can be ratified. Explain by which of the following ways, Mr. Mittal will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

1. By filing a case against Paridhee, a minor for recovery of outstanding amount with interest?
2. By filing a case against Mr. Ram, father of Paridhee for recovery of outstanding amount?
3. By filing a case against Paridhee, a minor for recovery of outstanding amount after she attains majority?

(RTP Nov'23)

Answer 7

A contract made with or by a minor is void ab-initio: Pursuant to Section 11 of the Indian Contract Act, 1872, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

1. By following the above provision, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, a minor.
2. **Minor cannot bind parent or guardian:** In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.

In the instant case, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Paridhee.

3. **No ratification after attaining majority:** A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

Hence, in this case also, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, after she attains majority

Question 8

State with reason(s) whether the following agreements are valid or void as per the Indian Contract

Act, 1872:

1. Where two courts have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other.
2. X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.
3. X, a physician and surgeon, employs Y as an assistant on a salary of \$ 75,000 per month for a term of two years and Y agrees not to practice as a surgeon and physician during these two years.

(RTP Nov'23)

Answer 8

1. The given agreement is valid.

Reason: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court (Section 28 of the Indian Contract Act, 1872). A contract of this nature is void. However, in the given statement, no absolute restriction is marked on parties on filing of suit. As per the agreement, suit may be filed in one of the courts having jurisdiction.

2. The said agreement is void.

Reason: This agreement is void as the two parties are thinking about different subject matters so that there is no real consent, and the agreement may be treated as void because of mistake of fact as well as absence of consensus.

3. The said agreement is valid.

Reason: An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void (Section 27). But, as an exception, agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

Question 9

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 \$ 5 lakhs would be paid, if Mr. X does not take up the case of Mr. Raman.

Mr. X agrees, but at the end of the litigation, Mr. Seth refused to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872.

(RTP Nov 23)

Answer 9

According to Section 27 of Indian Contract Act, 1872 an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

In the instant case, Mr. Seth is in litigation with Mr. Raman since long. Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of * 5 lakhs would be paid, if Mr. X does not take up the case of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refused to pay.

As section 27 makes the contracts in restraint of trade, void, the contract between Mr. Seth and Mr. X is also void. Hence, Mr. X cannot recover the amount promised by Mr. Seth.

Question 10

Mr. Ayush, the employer induced his employee Mr. Bobby to sell his one room flat to him at less than the market value to secure promotion. Mr. Bobby sold the flat to Mr. Ayush. Later on, Mr. Bobby changed his mind and decided to sue Mr. Ayush. Examine the validity of the contract as per the provisions of the Indian Contract Act, 1872.

(RTP Jun 24) (PYP Jun 23 2 Marks)

Answer 10

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

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party, whose consent was so caused.

Hence, the contract between Mr. Ayush and Mr. Bobby is voidable at the option of Mr. Bobby as it was induced by undue influence by Mr. Ayush and therefore Mr. Bobby can sue Mr. Ayush.

Question 11

Kapil went to a departmental store to purchase a steel pan. He asked the salesman about the area in departmental store where steel pans are kept. The salesman indicated him the area with instructions that with steel pans, other metal's pans were also kept. Kapil wrongfully picked an aluminium pan in place of steel pan. The salesman watched but said nothing to Kapil. Kapil reached his house and found that pan was not a steel pan but actually an aluminium pan. Kapil filed a suit against departmental store for fraud. Discuss, whether Kapil was eligible to file suit for fraud against departmental store under Indian Contract Act, 1872?

(MTP Mar'22 6 Marks)

Answer 11

Section 17 of Indian Contract Act, 1872 defines 'Fraud'. According to section, "Fraud" means and includes any of the following acts committed by a party to a contract or by his agent with intent to deceive or to induce a person to enter into the contract:

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

It was also explained that mere silence is not fraud. Silence amounts to fraud where (a) there is a duty to speak or (b) where silence is equivalent to speech.

On the basis of provisions of Section 17 and the facts given above, it was not the duty of salesman to inform Mr. Kapil about his mistake. Hence, there was no fraud and Kapil was not eligible to file suit for fraud against departmental store under Indian Contract Act, 1872.

Question 12

Karan agreed to purchase wooden table for his study room from Mr. X. Table was in good condition and was examined by Karan before purchasing. He found no defects in it and paid Rs. 20,000 for that table. Later on, it was found that one leg of table is broken and Mr. X has pasted the wood and tried to hide the defects in the table. Can Karan return the table and claim the amount back? Discuss the same with reference to Indian Contract Act, 1872 ?

(MTP Jun'22 3 Marks) (RTP Nov'22)

Answer 12

As per Section 17 of Indian Contract Act, 1872, "A false representation of material facts when made intentionally to deceive the other party to induce him to enter into a contract is termed as a fraud." Section 17(2) further states about active concealment. When a party intentionally conceals or hides some material facts from the other party and makes sure that the other party is not able to know the truth, in fact makes the other party believe something which is false, then a fraud is committed. In case a fraud is committed, the aggrieved party gets the right to rescind the contract. (Section 19). If the aggrieved party has obtained some benefits in such a contract (caused by fraud), then all such benefits should be restored or returned back. And if aggrieved party has suffered any losses, it should be compensated by the other party.

On the basis of above provisions and facts of the case, in case a fraud is committed by one party, the contract becomes voidable at the option of the aggrieved party. Hence, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.

Question 13

Rohan is running a grocery store in Delhi. He sells his grocery business, including goodwill worth Rs. 1,00,000 to Rohit for a sum of Rs. 5,00,000. After the sale of goodwill, Rohit made an agreement with Rohan. As per this agreement, Rohan is not to open another grocery store (similar kind of business) in the whole of India for next ten years. However, Rohan opens another store in the same city two months later. What are the rights available with Rohit regarding the restriction imposed on Rohan with reference to Indian Contract Act, 1872?

(MTP Jun'22 6 Marks) (MTP 6 Marks, Oct'21)

Answer 13

Question Bank —> Chap 2 (Unit 3) - ICA, 1872

Section 27 of the Indian Contract Act, 1872 provides that any agreement that restrains a person from carrying on a lawful trade, profession or business is void agreement. However, there are certain exceptions to this rule. One of the statutory exceptions includes sale of Goodwill. The restraint as to sale of goodwill would be a valid restraint provided-

1. Where the restraint is to refrain from carrying on a similar business
2. The restraint should be within the specified local limits
3. The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price

The restriction should be reasonable. Reasonableness of restriction will depend upon number of factors as considered by court.

In the given case, Rohan has sold the goodwill and there is restraint for not carrying on the same business of grocery store. However the restriction imposed on Rohan is unreasonable as he cannot carry similar business in whole of India for next 10 years. The restriction on restraint to similar kind of trade should be reasonable to make it a valid agreement. Therefore, Rohit cannot take any legal action against Rohan as the restriction is unreasonable as per Section 27 of Indian Contract Act, 1872. Hence, the agreement made between Rohan and Rohit in restraint of trade is void agreement.

Question 14

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

1. X aged 16 years borrowed a loan of Rs. 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.
2. J contracts to take in cargo for K at a foreign port. '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.

(MTP Nov'22 6 Marks)

Answer 14

1. According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject and therefore, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning. A minor cannot ratify it on attaining the majority as the original agreement is void ab initio.

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According to Section 68 of the Act, a claim for necessities supplied to a minor is enforceable by law.

Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles.

In the present case, X, the borrower, was minor at the time of taking the loan, therefore, the agreement was void ab initio. Attaining majority thereafter will not validate the contract nor X can ratify it. The loan was for personal purposes and not for necessities supplied to him. Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.

2. 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.

Question 15

Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.

(MTP Apr'23 6 Marks)

Answer 15

A minor cannot be bound by a contract because a minor's contract is void and not merely voidable.

Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract.

Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Indian Partnership Act, 1932. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights of such a partner will be governed under Section 30 as follows:

Rights:

1. A minor partner has a right to his agreed share of the profits and of the firm.
2. He can have access to, inspect and copy the accounts of the firm.

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3. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
4. On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

Question 16

Pradeep sells by auction to Rakesh a horse which Pradeep knows to be unsound. The horse appears to be sound, but Pradeep knows about the unsoundness of the horse. Is this contract valid in the following circumstances:

1. If Pradeep says nothing about the unsoundness of the horse to Rakesh.
2. If Pradeep says nothing about it to Rakesh who is Pradeep's son.
3. If Rakesh says to Pradeep "If you do not deny it, I shall assume that the horse is sound." Pradeep says nothing.

(MTP May 23 3 Marks)

Answer 16

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

1. This contract is valid since as per section 17, mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
2. This contract is not valid since as per section 17, it becomes Pradeep's duty to tell Rakesh about the unsoundness of the horse because a fiduciary relationship exists between Pradeep and his son Rakesh. Here, Pradeep's silence is equivalent to speech and hence amounts to fraud.
3. This contract is not valid since as per section 17, Pradeep's silence is equivalent to speech and hence amounts to fraud.

Question 17

Rahul induced Neeraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Neeraj complained that there were many

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defects in the motorcycle. Rahul proposed to get it repaired and promised to pay 45% of the cost of repairs. After a few days, the motorcycle did not work at all. Now Neeraj wants to rescind the contract. Decide giving reasons under the provisions of Indian Contract Act, 1872.

(MTP May 23 3 Marks)

Answer 17

In the instant case, 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 in some way affirms it.

Accordingly, in the given case, Neeraj could not rescind the contract, as his acceptance to the offer of Rahul to bear 45% of the cost of repairs impliedly amounts to final acceptance of the sale.

Question 18

Chhotu of 17 years has purchased a mobile of Rs. 25,000 for his online classes from Mobile Sales Centre on credit. On due date, he did not make the payment of mobile. Mobile Sales Centre sued Chhotu and his parents for the price of mobile. Chhotu has Rs. 15,000 as his cash balance but his father has enough money to pay the price of mobile. Who will be liable to pay the price of mobile under the provisions of Indian Contract Act, 1872?

(MTP Nov'23 6 Marks)

Answer 18

Section 11 of the Indian Contract Act, 1872 provides that a minor is not capable to enter into a contract.

A contract with minor is void-ab-initio. A minor cannot be enforced to pay off his liabilities. Parents or guardians of minor are also not liable for any contract entered by minor. However, a minor is liable for supplies of necessities out of his assets. Minor is not personally liable even for necessities.

In the instant case, parents of Chhotu are not liable for price of mobile. Chhotu's assets are liable to make the payment of price. Hence, Mobile Sales Centre can recover only Rs. 15,000 from Chhotu. i.e. equal to his assets.

Question 19

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Ayush, who is a minor, purchased 10 fancy coats for the wedding ceremony of his sister on credit from M/s Surjewala & sons. The cost of all coats was Rs. 80,000. Not even a single coat was a necessity. Ayush has assets of worth of Rs. 1,00,000. M/s Surjewala & sons file a suit against Ayush for recovery of Rs. 80,000 out of his assets. Following the provisions of Indian Contract Act, 1872, whether Ayush is liable to pay Rs. 80,000 to M/s Surjewala & sons?

(MTP Dec'23 6 Marks)

Answer 19

According to Section 11 of Indian Contract Act, 1872, a contract with minor is void-ab-initio. A minor cannot be enforced to pay off his liabilities. Parents or guardians of minor are also not liable for any contract entered by minor. However, a minor is liable for supplies of necessities out of his assets. Minor is not personally liable even for necessities.

In the instant case, M/s Surjewala & sons file a suit against Ayush for recovery of Rs. 80,000 out of his assets who purchased 10 fancy coats for the wedding ceremony of his sister on credit from M/s Surjewala & sons.

On the basis of the facts of the problem, coats were not necessary items for Ayush. Hence, his assets cannot be attached for payment of price of coats. Therefore, M/s Surjewala & sons cannot claim Rs. 80,000 from Ayush.

Question 20

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

X aged 16 years borrowed a loan of Rs. 50,000 for his personal purposes. Few months later he had become major and could not pay back the amount borrowed, on due date. The lender wants to file a suit against X.

(PYP Dec'21 3 Marks)

Answer 20

According to Section 11 of the Indian Contract Act, 1872, every person is competent to contract who is of the age of majority according to the law to which he is subject and therefore, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning. A minor cannot ratify it on attaining the majority as the original agreement is void ab initio.

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According to Section 68 of the Act, a claim for necessities supplied to a minor is enforceable by law.

Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles.

In the present case, X, the borrower, was minor at the time of taking the loan, therefore, the agreement was void ab initio. Attaining majority thereafter will not validate the contract nor X can ratify it. The loan was for personal purposes and not for necessities supplied to him. Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.

Question 21

Srishti, a minor, falsely representing her age, enters into an agreement with an authorised Laptop dealer Mr. Gupta, owner of SP Laptops, for purchase of Laptop on credit amounting * 60,000/- for purchasing a laptop, on 1st August 2021. She promised to pay back the outstanding amount with interest @16% p.a. by 31st July 2022. She told him that in case she won't be able to pay the outstanding amount, her father Mr. Ram will pay back on her behalf. After One year, when Srishti was asked to pay the outstanding amount with interest she refused to pay the amount and told the owner that she is minor and now he can't recover a single penny from her.

She will be adult on 1st January 2024, only after that agreement can be ratified. Explain by which of the following way Mr. Gupta will succeed in recovering the outstanding amount with reference to the Indian Contract Act, 1872.

1. By filing a case against Srishti, a minor for recovery of outstanding amount with interest?
2. By filing a case against Mr. Ram, father of Srishti for recovery of outstanding amount?
3. By filing a case against Srishti, a minor for recovery of outstanding amount after she attains maturity?

(PYP May 22 6 Marks)

Answer 21

A contract made with or by a minor is void ab-initio: Pursuant to Section 11, a minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

1. By following the above provision, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, a minor.

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2. **Minor cannot bind parent or guardian:** in the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.

In the instant case, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Mr. Ram, father of Srishti.

3. **No ratification after attaining majority:** A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.

Hence, in this case also, Mr. Gupta will not succeed in recovering the outstanding amount by filing a case against Srishti, after she attains majority.

Question 22

Explain the terms "Trafficking relating to public offices and titles" and "Stifling prosecution" as per the Indian Contract Act, 1872.

(PYP Dec' 23 7 Marks)

Answer 22

Trafficking relating to Public Offices and titles: An agreement to trafficking in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. The following are the examples of agreements that are void since they are tantamount to sale of public offices.

1. An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
2. An agreement to procure a public recognition like Padma Vibhushan for reward is void.

Stifling Prosecution: An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice, therefore, such an agreement is void. The principle is that one should not make a trade of felony.

The compromise of any public offence is generally illegal.

For example, when a party agrees to pay some consideration to the other party in exchange for the later promising to forgo criminal charges against the former is an agreement to stifle prosecution and therefore is void.

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Under the Code of Criminal Procedure, there is however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy.

Question 23

"Mere silence does not amount to fraud". Explain the statement as per the provisions contained in the Indian Contract Act, 1872.

(PYP Dec'23 5 Marks)

Answer 23

Mere silence not amounting to fraud: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Exceptions to this rule:

1. Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).
2. Where the silence is, in itself, equivalent to speech.

Question 24

Mr. SHYAM owned a motor car. He approached Mr. HARISH and offered to sell his motor car for $\frac{3}{5}$ 3,00,000. Mr. SHYAM told Mr. HARISH that the motor car is running at the rate of 20 KMs per litre of petrol. Both the fuel meter and the speed meter of the car were working perfectly. Mr. HARISH agreed with the proposal of Mr. SHYAM and took delivery of the car by paying \$ 3,00,000/- to Mr. SHYAM.

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After 10 days, Mr. HARISH came back with the car and stated that the claim made by Mr. SHYAM regarding fuel efficiency was not correct and therefore there was a case of misrepresentation.

Referring to the provisions of the Indian Contract Act, 1872, decide and write whether Mr. HARISH can rescind the contract on the above ground.

(RTP May'21)

Answer 24

As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. HARISH had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. HARISH cannot rescind the contract on the above ground.

Question 25

Mr. S, aged 58 years was employed in a Government department. He was going to retire after two years. Mr. D made a proposal to Mr. S, to apply for voluntary retirement from his post so that Mr. D can be appointed in his place. Mr. D offered a sum of Rs. 10 Lakhs as consideration to Mr. S in order to induce him to retire. Mr. S refused at first instance but when he evaluated the amount offered as consideration is just double of his cumulative remuneration to be received during the tenure of two years of employment, he agreed to receive the consideration and accepted the above agreement to receive money to retire from his office. Whether the above agreement is valid? Explain with reference to provision of the Indian Contract Act, 1872?

(RTP May'21)

Answer 25

Section 10 of the Indian Contract Act, 1872 provides for the legality of consideration and objects thereto.

Section 23 of the said Act also states that every agreement of which the object or consideration is unlawful is void.

The given problem talks about entering into an agreement for sale of public office, which is opposed to public policy. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested. Such consideration paid, being opposed to public policy, is unlawful.

In the given case, Mr. S, who was going to be retired after two years was proposed by Mr. D, to apply for voluntary retirement from his post, in order that he can be appointed in his place. In lieu of that, Mr.

D offered Mr. S a sum of Rs. 10 lakh as consideration. Mr. S refused initially but later accepted the said agreement to receive money to retire from his office.

Here, Mr. S's promise to sell for Mr. D, an employment in the public services is the consideration for Mr. D's promise to pay Rs. 10 lakh. Therefore, in terms of the above provisions of the Indian Contract Act, the said agreement is not valid. It is void, as the consideration being opposed to public policy, is unlawful.

Question 26

Ms. R owns a two Wheeler which she handed over to her friend Ms. K on sale or return basis. Even after a week, Ms. K neither returned the vehicle nor made payment for it. She instead pledged the vehicle to Mr. A to obtain a loan. Ms. R now wants to claim the two Wheeler from Mr. A. Will she succeed?

1. Examine with reference to the provisions of the Sale of Goods Act, 1930, what recourse is available to Ms. R?
2. Would your answer be different if it had been expressly provided that the vehicle would remain the property of Ms. R until the price has been paid?

(RTP May'21)

Answer 26

As per the provisions of Section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

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- a. when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- b. if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- c. he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question:

1. In the instant case, Ms. K, who had taken delivery of the two wheeler on Sale or Return basis pledged the two wheeler to Mr. A, has attracted the third condition that she has done something to the good which is equivalent to accepting the goods e.g. she pledges or sells the goods. Therefore, the property therein (two wheeler) passes to Mr. A. Now in this situation, Ms. R cannot claim back her two wheeler from Mr. A, but she can claim the price of the two wheeler from Ms. K only.
2. It may be noted that where the goods have been delivered by a person on "sale or return" on the terms that the goods were to remain the property of the seller till they are paid for, the property therein does not pass to the buyer until the terms are complied with, i.e., price is paid for.

Hence, in this case, it is held that at the time of pledge, the ownership was not transferred to Ms. K.

Thus, the pledge was not valid and Ms. R could recover the two wheeler from Mr. A.

Question 27

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 Rs. 40,000.

He was very happy to get Rs. 40,000 and quickly went to the market and purchased a laptop worth Rs. 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

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minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872?

(RTP Nov'21)

Answer 27

As per Section 11 of Indian Contract Act, 1872, a minor is not competent to enter into any contract. Any agreement with minor is void-ab-initio means void from the very beginning. When a person forms an agreement with minor, such an agreement is devoid of any legal consequences for the person because minor cannot be enforced by law to perform his part of performance in an agreement. However, if minor obtains any property by fraudulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. Although no action can be taken against the minor, but if has any property (of other party) in his possession, court can order him to return the same. Hence, in the present case, Rahul is not liable to repay Rs. 40,000 that he has borrowed from the shopkeeper, but he can be ordered by the court to return the laptop (which was in his possession) to the shopkeeper.

Question 28

"An agreement, the meaning of which is not certain, is void". Discuss.

(RTP Nov 21)

Answer 28

Agreement - the meaning of which is uncertain (Section 29 of the Indian Contract Act, 1872): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid.

For example, A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil because in such a case its meaning would be capable of being made certain.

Question 29

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.

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- c. If Q says to P "If you do not deny it, I shall assume that the horse is sound." P says nothing.

(MTP 3 Marks, Mar'21)

Answer 29

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

- a. This contract is valid since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
- b. This contract is not valid since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence is equivalent to speech and hence amounts to fraud
- c. This contract is not valid since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.

Question 30

Shyam induced Ram to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Ram complained that there were many defects in the motorcycle. Shyam proposed to get it repaired and promised to pay 45% cost of repairs. After a few days, the motorcycle did not work at all. Now Ram wants to rescind the contract. Decide giving reasons.

(MTP 3 Marks, Mar 21)

Answer 30

In the instant case, 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, Ram could not rescind the contract, as his acceptance to the offer of Shyam to bear 45% of the cost of repairs impliedly amount to final acceptance of the sale.

Question 31

Explain the term "Coercion" and what are the effects of coercion under Indian Contract Act, 1872.

(MTP 5 Marks, Oct'21)

Answer 31

Coercion (Section 15)

"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

Effects of coercion under section 19 of Indian Contract Act, 1872

1. Contract induced by coercion is voidable at the option of the party whose consent was so obtained.
2. As to the consequences of the rescission of voidable contract, the party rescinding a void contract should, if he has received any benefit, thereunder from the other party to the contract, restore such benefit so far as may be applicable, to the person from whom it was received.
3. A person to whom money has been paid or anything delivered under coercion must repay or return it. (Section 72)

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