

SUGGESTED ANSWERS FOR TEST 1 – The Indian Contract Act, 1872**Answer any 6 questions. Each question carries 4 marks each. Duration – 60 Mins**

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

Answer:**Supervening/Subsequent impossibility:**

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

In case of supervening impossibility the contract becomes void.

Circumstances:

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

(a) Accidental destruction of the subject matter of the contract: If the subject matter of the contract is destroyed by an accident both the parties are excused from the performance of the contract.

(b) Non-existence or non occurrence of a particular state of things: Non-existence or non occurrence of a particular state of things of the contract exempts the parties from the performance of the contract.

(c) Incapacity to perform a contract of personal services: In case of contract of personal service, disability or incapacity to perform, caused by the act of God e.g. illness, constitutes lawful excuse for non-performance of the contract.

(d) Change in law: Performance of a contract may also become impossible due to a subsequent change in the law. The law passed after the contract may prohibit performance of some act, which may be very basis of the contract. As such the contract is discharged due to subsequent impossibility and the parties become free from their mutual obligations.

(e) Outbreak of war: Contracts may be affected by war in a variety of ways, viz., (i) by emergency legislation controlling prices or otherwise relating to restriction of trade; (ii) by prohibiting or restraining transaction with alien enemy.

2. X, Y and Z jointly borrowed Rs.50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:
 - (i) Y can recover the contribution from X and Z,
 - (ii) Legal representatives of X are liable in case of death of X,
 - (iii) Y can recover the contribution from the assets, in case Z becomes insolvent.

Answer:

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise.

In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several".

Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

- i. Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
 - ii. Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
 - iii. 'Y' also can recover the contribution from Z's assets.
3. Mr.Agrawal an industrialist has been fighting a long drawn litigation with Mr.Raj, another industrialist. To support his legal campaign Mr.Agrawal enlists the services of Mr.Z a legal expert stating that an amount of Rs.5 lakhs would be paid, if Mr.Z does not take up the brief of Mr.Raj. Mr.Z agrees, but at the end of the litigation Mr.Agrawal refuses to pay. Decide whether Mr.Z can recover the amount promised by Mr.Agrawal under the provisions of the Indian Contract Act, 1872.

Answer:

As per the provisions of The Indian Contract Act 1872, one of the essential elements of a valid contract is that the agreement must not be the one which the law declares to be either illegal or void. A void agreement is one without any legal effect.

As per sec 27 of the said Act, Agreement in restraint of lawful trade, occupation or profession of any kind is void.

In the given case, Mr.Agrawal enlists the services of Mr.Z and asked him not to take up the brief of Mr.Raj (the opponent) for which he agreed to pay Rs.5 Lakhs to Mr.Z. Mr.Z agreed for the same but after the litigation ended Mr.Agrawal refuses to pay.

So, the question involved is whether Mr.Z can recover the amount promised by Mr.Agrawal or not.

Applying the above provision in the given case, we understand that this is an agreement in restraint of lawful profession which is expressly declared to be void since illegal and

Thus Mr.Z cannot recover the amount of Rs.5 lakhs promised by Mr.Agrawal.

4. Point out with reasons whether the following agreements are valid or void:
- (i) Kamala promises Ramesh to lend Rs.50,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
 - (ii) Ram sells the goodwill of his shop to Shyam for Rs.4,00,000 and promises not to carry on such business forever and anywhere in India.
 - (iii) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceeding against each other without consent.
 - (iv) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.

Answer:

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

5. "A" applies to a banker for a loan at a time where there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Whether the contract is induced by undue influence? Decide.

Answer:

Facts of the case: A approaches the banker for a loan at the time where there is money stringency in the market. The banker grants loan on the condition that an unusually high rate of interest.

Question involved is whether the contract is induced by undue influence or not?

Provision & Analysis: This is a transaction in the ordinary course of business, and the contract is not induced by undue influence, as between parties on an equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of the borrower, the relief is granted on the ground of undue influence.

Conclusion: In this case A intentionally accepts the loan; therefore the contract is not induced by undue influence.

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

Answer:

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

The given case is based on a case "Chinnaya vs. Ramayya" in which Honorable Court clearly observed that the consideration need not necessary move from the party clearly observed that the consideration need not necessary move from the party itself, it may move from any person.

In the given case, the same reason applies.

Hence, M is liable to pay the said sum to N, and cannot deny from liability on the ground that consideration did not move from N.

7. State whether the following is true or false with reasons:
- a. Social agreements are enforceable in the Courts of India.
Ans: False. Social agreements do not create any legal obligation, hence are not enforceable in the courts of India.
 - b. The proposal should always be communicated to the person to whom it is made.

Ans: True. The proposal should be communicated to whom it is made except when that person specifies that it can be sent to his agent as well.

c. A tender does not amount to an offer.

Ans: False. A tender is a kind of standing offer.

d. In case of void agreements, collateral transaction are also void.

Ans: False. Collateral transaction to illegal agreement is also void but not for void agreements.