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SUBJECT- LAW

Test Code – CFN 9265

BRANCH - () (Date :)

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

ANSWER – 1

ANSWER -A

Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the *Chinnaya Vs. Ramayya*, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration did flow from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller."

(4 MARKS)

In such a case, third party to a contract can file the suit although it has not moved the consideration.

Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.

(1 MARK)

ANSWER – B

- (a) **Uncertain Event** : Uncertainty may be due to – (i) the event is yet to take place or (ii) it might have already happened but the parties are not aware of its result.
- (b) **Mutual chances of gain or loss** : Each party should to win or lose. If either of the parties may win but cannot lose, or both may lose and cannot win, it is not a Wagering Agreement.
- (c) **Neither party to have control over event** : No party should be able to control the happening or non happening of the contingent event. Where one party has control over the event, the transaction is not a wager.
- (d) **No other interest in the event** : Neither party should have interest in the happening (or non – happening) of the event other than the sum or stake he stands to win or lose.
- (e) **Money or money's worth** : To constitute wager, the promise should be to pay money or money's worth only.

(5*1 = 5 MARKS)

ANSWER – 2

ANSWER –A

Liquidated damage is a genuine pre – estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculations and the necessity to convince outside parties.

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

In terms of Section 74 of the Act “where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the other party who has broken the contract, a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

Explanation to Section 74

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is ‘penalty’ or “liquidated damages” provided the sum appears to be unreasonably high.

Sri Chunnilal vs. Mehta & Sons Ltd.(Supreme Court)

Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then the court has powers to reduce the amount if it considers it reasonable to reduce.

(5 MARKS)

ANSWER –B

The essentials of Undue Influence as per the Indian Contract Act, 1872 are the following:

- (1) Relation between the parties:** A person can be influenced by the other when a near relation between the two exists.
- (2) Position to dominate the will:** Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:
 - (a) Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.
 - (b) Fiduciary relationship:** Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.
 - (c) Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily

distress, illness or of old age.

(d) Unconscionable bargains: Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money lending transactions and in gifts.

(3) The object must be to take undue advantage: Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

(4) Burden of proof: The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

(5 MARKS)

ANSWER – 3

ANSWER -A

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

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

(4 MARKS)

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

(2 MARKS)

ANSWER –B

1. According to **William Anson**, Offer may be compared to a Train of Gun Powder and Acceptance to a Lighted Match – Stick. The moment, a lighted match – stick reaches a train of gun – powder, the train of gun – powder catches fire and leaves no trail but ash. But the train may move before the match stick reaches it.
2. If Acceptance (match – stick) reaches Offer (gun – powder), it culminates in a Contract, leaving as such no more Offer or Acceptance. But Offer can be revoked before acceptance reaches the Offeree.
3. Offer by itself is inert, it materialises into a Contract only when it is accepted, i.e., the train catches fire only when the match – stick reaches it. Thus, Once an Offer is

accepted, it becomes a Contract, and there can be no revocation as legal relationship is established between the parties.

4. But in the Indian context, revocation may be made even after sending letter of acceptance, but before it reaches the offeror. Hence, this statement has limited applicability to the Indian Contract Law.

(4*1 = 4 MARKS)

ANSWER – 4

ANSWER –A

No consideration, no contract : Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. A gratuitous promise may form a subject of a moral obligation and may be binding in honour but it does not cause a legal responsibility. For example, A promises to pay Rs. 100 to B. This promise cannot be enforced by B because he is not giving anything to A for this promise. No consideration, no contract is a general rule. However Section 25 of the Indian Contract Act provides some exceptions to this rule, where an agreement without consideration will be valid and binding.

These exceptions are as follows :

(1 MARK)

- (i) **Agreement made on account of natural love and affection** : Section 25(1) provides that if an agreement is (i) in writing (ii) registered under the law and (iii) made on account of natural love and affection (iv) between the parties standing in a near relation to each other, it will be enforceable at law even if there is no consideration. Thus, where A, for natural love and affection, promises to give his son, B, Rs. 10,000 in writing and registers it. This is a valid contract.
- (ii) **Compensation for services voluntarily rendered** : Section 25(2) provides that something which the promisor was legally compelled to do; (iii) and the promisor was in existence at the time when the act was done whether he was competent to contract or not (iv) the promisor must agree now to compensate the promise. Thus when A finds B's purse and gives it to him and B promises to give A Rs. 50, this is a valid contract.
- (iii) **Promise to pay time – barred debts (Section . 25(3))** : Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and binding even though there is no consideration. If A owes B Rs. 1,000 but the debt is lapsed due to time – bar and A further makes a written promise to pay Rs. 500 on account of this debt, it constitutes a valid contract.
- (iv) **Contract of agency (Section. 185)** : No consideration is necessary to create an agency.
- (v) **Completed gift (Explanation 1 to Section 25)** : A completed gift needs no consideration. Thus if a person transfers some property by a duly written and registered deed as a gift he cannot claim back the property subsequently on the ground of lack of consideration.

(5*1 = 5 MARKS)

ANSWER –B

As per Section 73 of Indian Contract Act, 1872, the vindictive damages are claim with the intention of punishing the party in default. As a general rule, the exemplary damaged are not awarded for the breach of contract as they are punitive in nature. However, in following case, the court may award exemplary damages :

Where there is a breach of a promise to marry : In such cases, the damages will include compensation for loss to the feelings and reputation of the aggrieved party.

In the given question, A, an Indian, contracts to marry B. A is already married – a – fact of which B was unaware. A breaks his promise in course of time. Thereupon B brings a suit against A for a breach of contract. A pleads that his promise is impossible of being performed as the law of the country does not permit polygamy.

A can get away with the plea as the marriage cannot be forced upon. However, he is liable to vindictive damages as stated above.

(4 MARKS)

ANSWER – 5

ANSWER –A

As per Section 2(h) of Indian Contract Act, 1872 Contract is an agreement which is enforceable by law. Social agreements are not enforceable by law. As per case law Balfour v. Balfour, a husband promised to pay maintenance allowance every month to his wife, so long as they remain separate. When he failed to perform this promise, she brought an action to enforce it. As it is an agreement of domestic nature, it was held that it does not contemplate to create any legal obligation.

Father promised to pay his son a sum of one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. This a social agreement which is not enforceable by law. Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of 1 lakh from father for the reasons explained above.

(4 MARKS)

ANSWER –B

According to Section 56 of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as ‘supervening impossibility’ (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently). But impossibility of performance is as a rule, not an excuse form performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strike, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract.

In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 and hence Mr. Akhilesh is liable to Mr. Shekhar for non – performance of contract.

(6 MARKS)