

# **Sanjeevani Booti**

**V.IMP CASE  
STUDIES FOR CA  
FOUNDATION  
Dec'23**

**THE INDIAN CONTRACT  
ACT, 1872**

# ABOUT NIRAJ AGARWAL

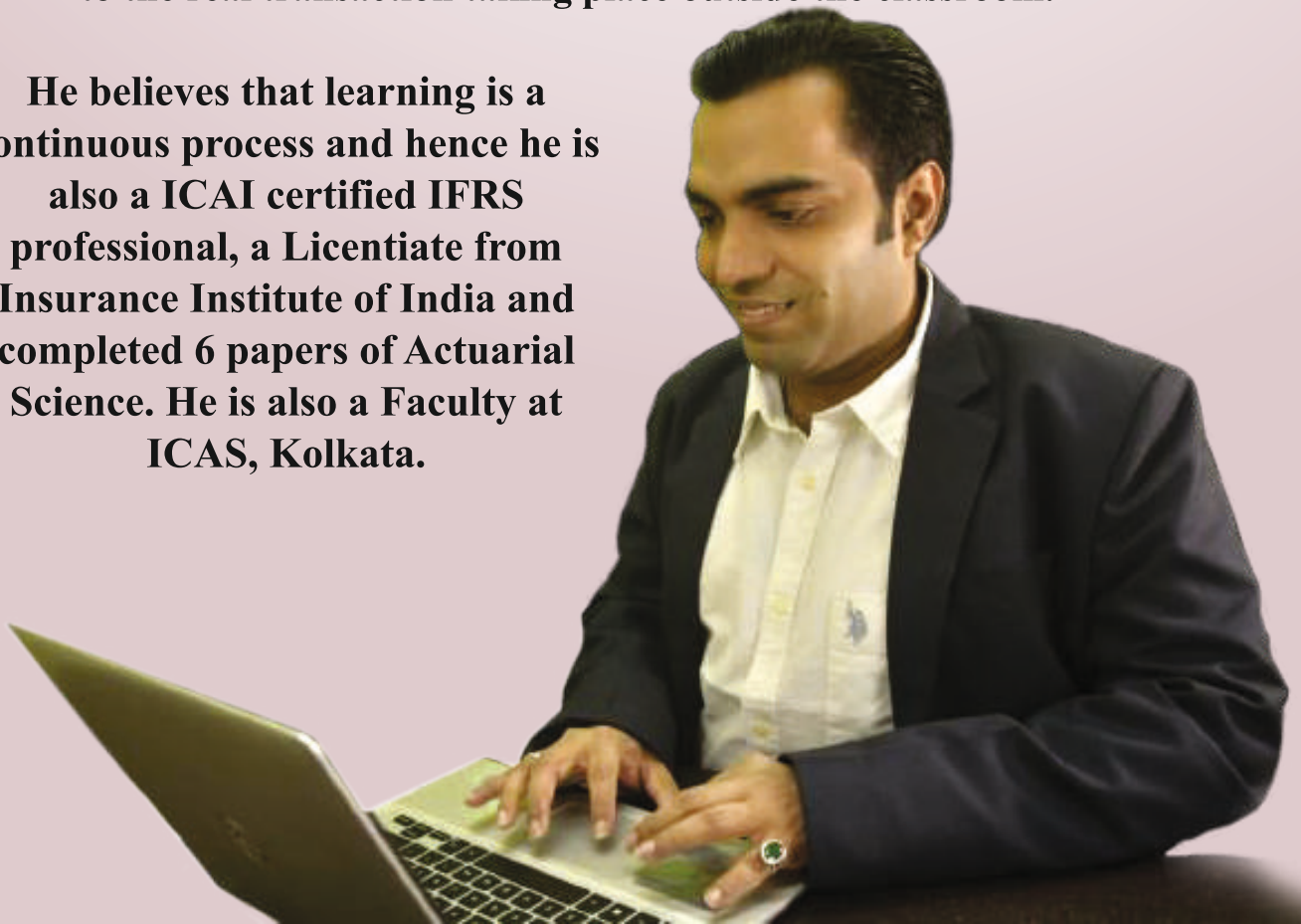
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**Niraj Agarwal is a Chartered Accountant, Company Secretary, Cost & Management Accountant. He is an All India Rank Holder in all the 3 courses. He has graduated from St. Xavier's College, Kolkata and holds a Master's degree in commerce too.**

**Prior to teaching, Niraj has worked with large corporates like Idea Cellular Ltd and Magma HDI. During his stint in corporate world he has recognised at different level for his dedication, diligence and commitment. Acknowledged with the "Start Performer Award" & "Aditya Birla Excellence Award" in Idea Cellular Limited. He has also served EIRC of ICAI as Hony Secretary of the Student's Association for a period of two Continuous years. He was awarded with best presenter during GMCS session of ICAI. He was also awarded with Letter of Appreciation from Vice Principal, St. Xavier's College for dynamic leadership skills, efficient communication skills, good academic record and active participation in College Activities.**

**Niraj possesses a vast experience of teaching to students. His unique lecture delivery and practical method of teaching help the student to easily grasp & remember the subject. His Corporate stint makes it possible for him to make students relate the concepts taught in classroom to the real transaction taking place outside the classroom.**

**He believes that learning is a continuous process and hence he is also a ICAI certified IFRS professional, a Licentiate from Insurance Institute of India and completed 6 papers of Actuarial Science. He is also a Faculty at ICAS, Kolkata.**



# COURSES OFFERED

-  CA FOUNDATION (All papers)
  -  CA INTERMEDIATE (Accounting & Advance Accounting)
  -  CMA FOUNDATION (All papers)
  -  CMA INTERMEDIATE (Financial Accounting & Company Accounts)
  -  CS EXECUTIVE (Corporate Accounting)
- 

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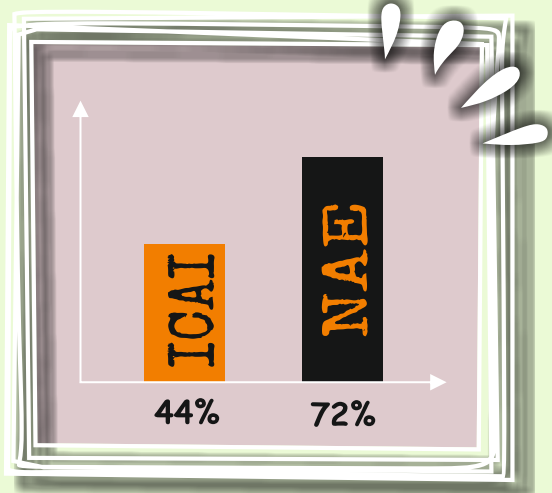
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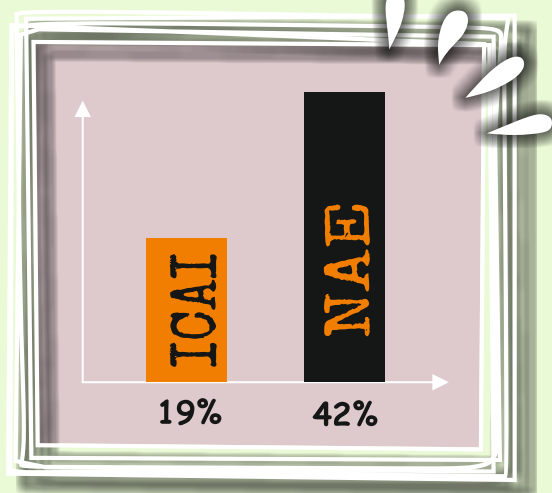
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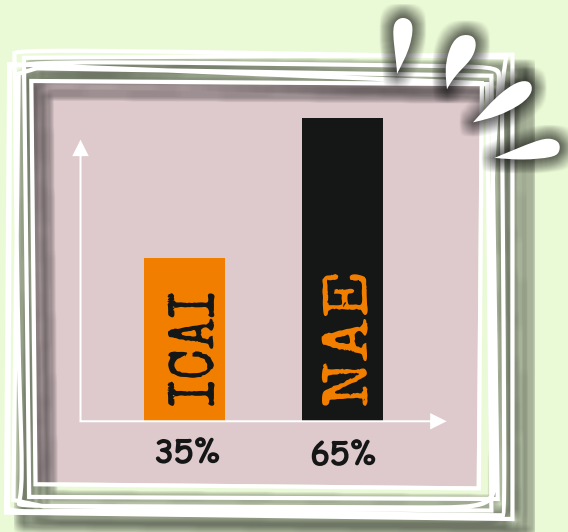
NOV '18



MAY '19



NOV '19



NOV '20



JAN '21

# NOV '18 RANKHOLDERS



**YATHARTH  
CHOUDHURY**

**AIR 28**



**HIRSAT SINGH  
SAJUJA**

**AIR 38**



**RAKESH KR.  
SINGH**

**AIR 48**

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# NOV '19 RANKHOLDERS



**SURAJ BAKLIWAL**  
**AIR 26**



**AMAN CHOWDHARY**  
**AIR 27**



**RAHUL AGARWAL**  
**AIR 31**

**YASH DAMANI**  
**AIR 34**



**DEVANSH DAMANI**  
**AIR 44**



CA FOUNDATION  
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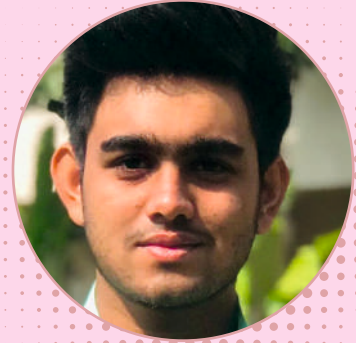
*Yudhit More*  
**278/400**

# STUDENT'S SPEAK

## ● Suraj Bakliwal | AIR 26

St. Xavier's College

Studying from niraj sir was an amazing experience. He is unlike all the teachers who have taught me. Sir is always ready for help no matter what the problem is, no matter what time it is. He has given me personal guidance throughout the course and the general teacher-student relation has become more like friendship. The study material given by sir is fully exhaustive and second to none. In addition to the classroom teaching, sir also motivated us a lot and didn't only show us the dream of getting a rank but also helped us in every way possible as if it were a dream of his own. I would like to thank sir for everything and suggest everyone to take his classes to experience the excellence!



## ● Aman Chowdhary | AIR 27

St. Xavier's College

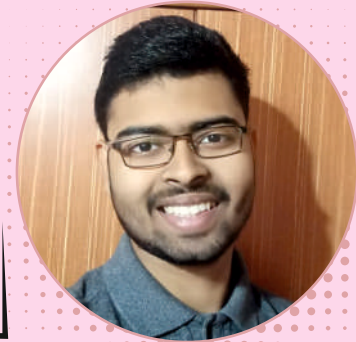
I'm quite grateful to be a part of NAE family where I got to meet many new people and learn from extremely qualified teachers. Niraj sir helped me to shape my dream of becoming an AIR. Without his support it would have been very difficult. At each and every moment he supported me and encouraged me to improve myself. I'm really thankful to him.



## ● Yatharth Chowdhury | AIR 28

St. Xavier's College

Joining here was a very memorable experience for me. Niraj Sir was not only my teacher, but a mentor for life. He is more of a friend to me. The regular tests helped me to identify my weaknesses and work upon them. The conceptual clarity they provided, helped me to clear my CA foundation exam and secure an All India Rank.



## ● Rahul Agarwal | AIR 31

St. Xavier's College

Association with NAE was a great experience. Personal attention and doubt clearing (24x7) on any topic makes the faculty unique on its own. One feels good when you have a teacher as a friend. Focus on life examples supports in concept clarity and always motivating you to do more and better



# STUDENT'S SPEAK

## ● Yash Damani | AIR 34

St. Xavier's College

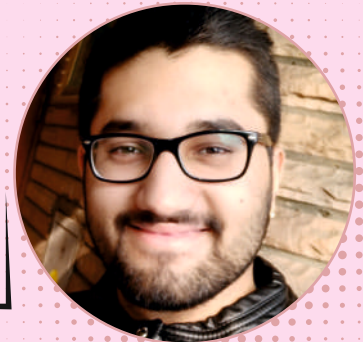
"An opportunity which everyone should capitalize on", that's what learning things from Niraj sir is. From late night calls to endless doubts I always knew that sir was available to help me get things back on track. With the overwhelming love I have got for the entire 6 months of my preparation time, I really discovered a friend in him more than a teacher. Don't know about others, but I will miss your classes and will keep cherishing the memories I have made there. To end things, I would just want to say that I'm thankful to sir because whatever I've achieved today is all because of the motivation I've been receiving from him throughout this journey.



## ● Harsat Singh Saluja | AIR 38

St. Xavier's College

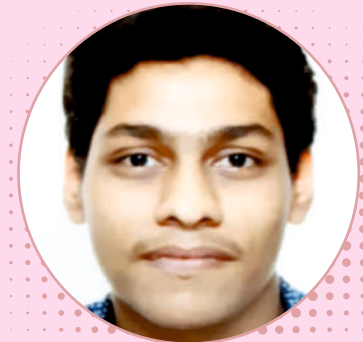
It's been all in all a great experience learning from sir. He has been a great guide and mentor throughout my journey towards excellence. I am obliged to sir for all the contribution he has made. I will always keep learning something from you sir.



## ● Devansh Damani | AIR 44

St. Xavier's College

Stepping into the line of a professional career was a very new and exciting experience. It seemed that the boards exams were just a trailer while the movie is about to come. He is a mentor not just for exams but for life who were instrumental in shaping my career. He kept me motivated throughout the 6 months of preparation. From books to revision papers to mock tests and obviously his vast knowledge, all together are more than sufficient for the preparation. The best thing in his teaching was the references to the practical world, which was a bonus for us. After all, their faith and dedication for us helped me achieve an AIR which was earlier only a dream. I greatly express my gratitude towards him.



## ● Rakesh Kr Singh | AIR 48

St. Xavier's College

It was my great opportunity and experience to study in this institute. He is very friendly with the students. He provides proper guidelines and notes for each and every chapter. As a result of his hard efforts while teaching and preparing me for CA Foundation exam, I got 48th All India Rank.





# STUDENT'S SPEAK

## ● Mathuri Agarwal

St. Xavier's College

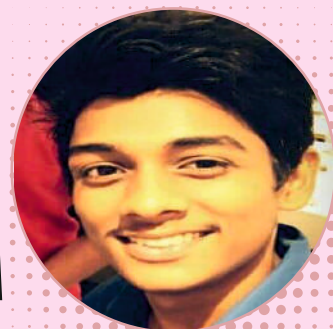
Apart from being a great teacher, Niraj sir is a very good mentor as well. Joining here, u receive not only conceptual clarity and full coverage of syllabus but also the right method to approach the course. I really enjoyed the classes here. This infact is the best among the rest. 😊



## ● Vidya B Singh

St. Xavier's College

For any student, guidance in right direction is more important than an intellectual mind and for me this academy became the catalyst. The personal guidance of sir really helped me in my studies but more importantly in taking the major decisions of my career. For a professional course like CA/CS/CMA initial guidance is a must for any aspirant.. I'll remain indebted to this institute



## ● Sailaja Dammani

Shri Shikshyatan College

One of the most dynamic teachers I have known. You have been more of a mentor than a teacher. You have an unbeatable formula for expediting learning and bringing success in the classroom. I have learnt a lot from you.



## ● Anisha Malawat

J D Birla Institute

Niraj sir makes us understand each and every topic with the slightest details possible. He is the best teacher I have met in my entire life . He puts in tremendous effort and hardwork to teach . Words would be less to describe him. Kudos to such an amazing mentor who has always been there with us .

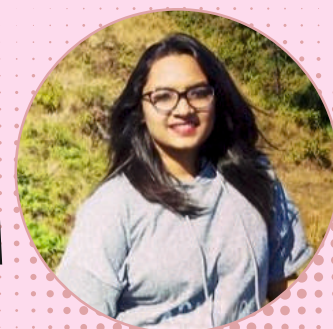


## ● Ishika Agarwal

St. Xavier's College

A mentor for a lifetime ❤️

Classes with sir have been so worthwhile. A very patient teacher who has an amazing way of breaking complex things into simpler ones. I recommend him highly

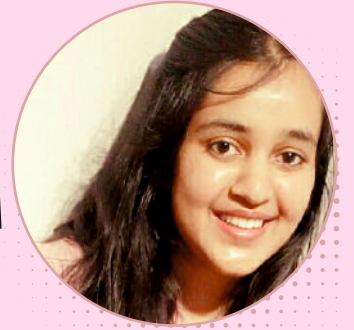


# STUDENT'S SPEAK

## ● Bhawna Chandak

Shri Shikshyatan College

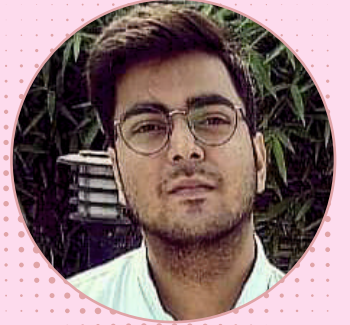
If you are worried about maths then he is the ultimate solution for foundation. Believe me his guidance , concept building and test series has helped alot.



## ● Sankalp Sharma

The Bhawanipur Education Society College

I used to hear from people, the only way to understand a subject is to fall in love with the subject. Niraj bhaiya was the main reason because of whom I did fall in love with my studies. I have never seen such a passionate teacher in life.



## ● Anshu Jajodia

Shri Shikshyatan College

Sir, it's been an amazing experience being your student. You have always motivated me and encouraged me throughout. Couldn't thank you enough. All I can say, blessed to be your student.



## ● Shivam Choudhary

The Notes and booklets' compilations, Real-life illustrations, Calci weaponization, Eleventh-hour suggestions, Throughout-the-course motivations and Prior-to-exam Convictions topped by Your fulfilling and reassuring method of teaching is very much more than a Student can ask for.

My marks are dedicated to you. 😊



## ● Yudhit More

Thank you so much niraj sir !!

Sir apka har ek step pe guidance is the reason hamloag itna acha perform kiye. Sir ko ek student ka mindset se jaha mistakes hoga pehle hi bata dete and icai ka mindset se kya paper set hoga vo bhi bata dete 😊

2020 me pardhai karna was not easy but sir ka classes aisa hi laga jaise face to face ho

So again thank you sir !!



## **THE INDIAN CONTRACT ACT, 1872**

### **Case Study#1**

X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y became insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z.

### **Ans**

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

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

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

In the instant case, X, Y and Z jointly promised to pay ₹ 3,00,000. Y became insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount. X is entitled to receive ₹ 20,000 from Y's estate, and ₹ 1,40,000 from Z.

### **Case Study#2**

M Ltd., contract with Shanti Traders to make and deliver certain machinery to them by 30.6.2017 for ₹ 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Due to this Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

### **Ans**

Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ₹ 1.25 lakh (i.e. ₹ 12.75 minus ₹ 11.50 = ₹ 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd. is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd. is not liable.



### Case Study#3

Mr. X and Mr. Y entered a contract on 1st August, 2018, by which. Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above contract.

Due to some technical default in the bus, their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000 which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention.

### Ans

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

Also, according to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. In the given question, after Mr. X and Mr. Y have entered into the contract to supply 50 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. X has to pay back the amount of ₹ 50,000 that he received from Mr. Y as an advance for the supply of sugar within the stipulated time. Hence, the contention of Mr. Y is correct.

### Case Study#4

Mr. Ramesh promised to pay ₹ 50,000 to his wife Mrs. Lali so that she can spend the sum on her 30th birthday. Mrs. Lali insisted her husband to make a written agreement if he really loved her. Mr. Ramesh made a written agreement and the agreement was registered under the law. Mr. Ramesh failed to pay the specified amount to his wife Mrs. Lali. Mrs. Lali wants to file a suit against Mr. Ramesh and recover the promised amount. Referring to the applicable provisions of the Contract Act, 1872, advise whether Mrs. Lali will succeed.

### Ans

Parties must intend to create legal obligations: There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

In the given question, Mr. Ramesh promised to pay ₹ 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfil the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. Here, in the given circumstance wife will not be able to recover the amount as it was a social agreement and the parties did not intend to create any legal relations.



### Case Study#5

A shop-keeper displayed a pair of dress in the show-room and a price tag of ₹ 2,000 was attached to the dress. Ms. Lovely looked to the tag and rushed to the cash counter. Then she asked the shop-keeper to receive the payment and pack up the dress. The shop-keeper refused to hand-over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the Ms. Lovely seeks your advice whether she can sue the shop-keeper for the above cause under the Indian Contract Act, 1872.

### Ans

The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. If the shopkeeper does not accept the price, the interested buyer cannot compel him to sell.

### Case Study#6

Mr. Sohanlal sold 10 acres of his agricultural land to Mr. Mohanlal on 25th September 2018 for ₹ 25 Lakhs. The Property papers mentioned a condition, amongst other details, that whosoever purchases the land is free to use 9 acres as per his choice but the remaining 1 acre has to be allowed to be used by Mr. Chotelal, son of the seller for carrying out farming or other activity of his choice. On 12th October, 2018, Mr. Sohanlal died leaving behind his son and life. On 15th October, 2018 purchaser started construction of an auditorium on the whole 10 acres of land and denied any land to the son.

Now Mr. Chotelal wants to file a case against the purchaser and get a suitable redressed. Discuss the above in light of provisions of Indian Contract Act, 1872 and decide upon Mr. Chotelal 's plan of action?

### Ans

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.”

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.

### **Case Study#7**

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

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

Discuss in light of the Indian Contract Act, 1872?

(i) Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?

(ii) Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

### **Ans**

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

(i) In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C.

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

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

### **Case Study#8**

X found a wallet in a restaurant. He enquired of all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep till the true owner is found. After a week he went back to the restaurant to enquire about the wallet. The manager refused to return it back to X, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can X recover it from the Manager?

### **Ans**

Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, a finder of lost goods has:

(i) to take proper care of the property as man of ordinary prudence would take

(ii) no right to appropriate the goods and



(iii) to restore the goods if the owner is found.

In the light of the above provisions, the manager must return the wallet to X, since X is entitled to retain the wallet found against everybody except the true owner.

### **Case Study#9**

Mr. Sonumal a wealthy individual provided a loan of ₹ 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of ₹ 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided ₹ 1,00,000 on 28.02.2019 and remaining ₹ 50,000 on 03.03.2019.

On 10.03.2019 Mr. Datumal while paying off part ₹ 75,000 to Mr. Sonumal insisted that the lender should adjust ₹ 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019.

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

Now you decide:

(i) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?

(ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?

(iii) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

### **Ans**

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

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

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

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

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

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

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



### Case Study#10

X' agreed to become an assistant for 2 years to 'Y' who was practicing Chartered Accountant at Jodhpur. It was also agreed that during the term of agreement 'X' will not practice as a Chartered Accountant on his own account within 20 kms of the office of 'Y' at Jodhpur. At the end of one year, 'X' left the assistantship of 'Y' and started practice on his own account within the said area of 20 kms. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?

### Ans

Agreement in Restraint of Trade: Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.

In the instant case, agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

Therefore, 'X' can be restrained by an injunction from practicing on his own account in within the said area of 20 Kms for another one year.

### Case Study#11

A student was induced by his teacher to sell his brand new car to the latter 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 on what ground the student can sue the teacher?

### Ans

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

### Case Study#12

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

### Ans

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





### Case Study#13

Decide with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:

- (i) Vijay agrees with Saini to sell his black horse for ₹ 3,00,000. Unknown to both the Parties, the horse was dead at the time of the agreement.
- (ii) Sarvesh sells the goodwill of his shop to Vikas for ₹ 10,00,000 and promises not to carry on such business forever and anywhere in India.
- (iii) Mr. X agrees to write a book with a publisher. After few days, X dies in an accident.

### Ans

(i) As per Section 20 of the Indian Contract Act, 1872, an agreement under by mistake of fact are void. In this case, there is mistake of fact as to the existence of the subject-matter, i.e., with respect to the selling of horse which was dead at the time of the agreement. It is unknown to both the parties. Therefore, it is a void agreement.

(ii) 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, provided that the conditions must be reasonable regarding the duration and place of the business. Since in the given case, restraint to carry on business was forever and anywhere in India, so the agreement in question is void.

(iii) As per section 2(j) of the Contract Act, “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. In the present case, Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

### Case Study#14

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:

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

### Ans

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.



### Case Study#15

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

#### Ans

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, 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.

### Case Study#16

X received certain goods from Y and promised to pay ₹ 60,000. Later on, X expressed his inability to make payment. Z, who is known to X, pays ₹ 40,000 to Y on behalf of X. However, X was not aware of the payment. Now Y is intending to sue X for the amount of ₹ 60,000. Can Y do so? Advise.

#### Ans

As per section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party. Therefore, in the instant case, Y can sue X only for the balance amount i.e. ₹ 20,000 and not for the whole amount.

### Case Study#17

Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance according to the Indian Contract Act, 1872 in the light of the following:

- The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.
- The telegram of revocation and letter of acceptance both reached together.

#### Ans

The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions:

- Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
- If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.



### Case Study#18

Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of ₹ 20,000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant. On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action.

Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid?

#### Ans

In India, consideration may proceed from the promisee or any other person who is not a party to the contract. The definition of consideration as given in section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract.

In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.

### Case Study#19

A coolie in uniform picks up the luggage of R to be carried out of the railway station without being asked by R and R allows him to do so. Examine whether the coolie is entitled to receive money from R under the Indian Contract Act, 1872

#### Ans

Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Indian Contract Act, 1872 contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

In the present case, it is an implied contract and R must pay for the services of the coolie

### Case Study#20

Point out with reason whether the following agreements are valid or void:

- Kamala promises Ramesh to lend ₹ 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
- Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
- Ram sells the goodwill of his shop to Shyam for ₹ 4,00,000 and promises not to carry on such business forever and anywhere in India.
- In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.
- Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend



**Ans**

Validity of agreements

(a) 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.

(b) Void Agreement: As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.

(c) 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 good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.

(d) Void Agreement: An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

(e) Valid Agreement: An agreement with alien friend is valid, but an agreement with alien enemy is void.

**Case Study#21**

Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay ₹ 6,00,000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise under the Indian Contract Act, 1872.

**Ans**

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

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

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

Therefore, in the instant case, Sanjay is entitled to receive ₹ 50,000 from Vijay's assets and ₹ 2,75,000 from Ajay.

**Case Study#22**

A sends an offer to B to sell his second-car for ₹ 1,40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week?

**Ans**

Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. So, in the given problem, if B remains silent, it does not amount to acceptance.

The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract



### Case Study#23

X, Y and Z jointly borrowed ₹ 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.

### Ans

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

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

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
- (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- (iii) Y also can recover the contribution from Z's assets.

### Case Study#24

Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

- (i) A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.
- (ii) Obligation of finder of lost goods to return them to the true owner
- (iii) A contract with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is affected, the fire caught in the factory and everything was destroyed.

### Ans

It is an implied contract and A must pay for the services of the coolie. Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Indian Contract Act, 1872 contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

(ii) Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts. Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.



(iii) The above contract is a void contract. Void Contract: Section 2 (j) of the Act states as follows: “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. Thus, a void contract is one which cannot be enforced by a court of law.

### **Case Study#25**

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 a 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?

### **Ans**

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.
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.

### **Case Study#26**

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 a 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?

### **Ans**

Yes, B can proceed against the assets of X. According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.



### Case Study#27

'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ₹ 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ₹ 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ₹ 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872.

### Ans

**BREACH OF CONTRACT- DAMAGES:** Section 73 of the Indian Contract Act, 1872 lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

The leading case on this point is "Hadley v. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated. The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ₹ 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'. If 'X' had not informed 'Z' of 'Y's contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ₹ 750/- (i.e. 1000 water bottles x 0.75 paise).

### Case Study#28

Mr. SHYAM owned a motor car. He approached Mr. VIKAS and offered to sell his motor car for ₹ 3,00,000. Mr. SHYAM told Mr. VIKAS 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. VIKAS agreed with the proposal of Mr. SHYAM and took delivery of the car by paying ₹ 3,00,000/- to Mr. SHYAM. After 10 days, Mr. VIKAS 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. VIKAS can rescind the contract in the above ground.

### Ans

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. VIKAS had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. VIKAS cannot rescind the contract on the above ground.

### **Case Study#29**

Vikas, aged 16 years, was studying in an engineering college. On 1st March, 2019 he took a loan of ₹ 2 lakhs from Rahul for the payment of his college fee and agreed to pay by 30th May, 2020.

Vikas possesses assets worth ₹ 15 lakhs. On due date, Vikas fails to pay back the loan to Rahul. Rahul now wants to recover the loan from Vikas out of his assets. Decide whether Rahul would succeed referring to the provisions of the Indian Contract Act, 1872.

### **Ans**

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, Vikas 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 necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries 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 necessaries 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, Rahul will be entitled to recover the amount of loan given to Vikas for payment of the college fees from the property of the minor.

### **Case Study #30**

Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

(i) X promise to sell his scooter to Y for ₹ 1 Lac. However, the consent of X has been procured by Y at a gun point.

(ii) A bought goods from B in 2015. But no payment was made till 2019.

(iii) G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G ₹ 5,000 per month.

### **Ans**

(i) In the instant case, X is an aggrieved party and the contract is voidable at his option but not at the option of Y. It means if X accepts the contract, the contract becomes a valid contract then Y has no option of rescinding the contract.

(ii) B cannot sue A for the payment in 2019 as it has crossed three years and barred by Limitation Act. A good debt becomes unenforceable after the period of three years as barred by Limitation Act.





(iii) Where, G agrees to give tuitions to H, a pre-engineering student, from the next month and H in consideration promises to pay G ₹ 5,000 per month, the contract is executory because it is yet to be carried out.

### **Case Study #31**

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 ₹ 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?

### **Ans**

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 ₹ 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 sale for Mr. D, an employment in the public services is the consideration for Mr. D's promise to pay ₹ 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.

### **Case Study #32**

What will be rights with the promisor in following cases? Explain with reasons:

(a) Mr. X promised to bring back Mr. Y to life again.

(b) A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15th March but due to riots in between reached B on 19th March.

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

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

### **Ans**

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

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



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

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

### **Case Study #33**

In light of provisions of the Indian Contract Act, 1872 answer the following:

(i) Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price. Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

(ii) Mr. Y has given loan to Mr. G of ₹ 30,00,000. Mr. G defaulted the loan on due date and debt became time barred. After the time barred debt, Mr. G agreed to settle the full amount to Mr. Y. Whether acceptance of time barred debt contract is enforceable in law?

(iii) A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract?

### **Ans**

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

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

(ii) 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.

In the given case, the loan given by Mr. Y to Mr. G has become time barred. Thereafter, G agreed to make payment of full amount to Mr. Y.

Referring to above provisions of the Indian Contract Act, 1872 contract entered between parties post time barred debt is valid so, Mr. G is bound to pay the agreed amount to Mr. Y provided the above mentioned conditions of section 25 (3) are fulfilled.

(iii) Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case the court may give order for specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.



**Case Study #34**

Krish, Kamyra and Ketan are partners in a firm. They jointly promised to pay Rs. 6,00,000 to Dia.

Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.

**Ans**

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

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

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

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

**Case Study #35**

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.

**Ans**

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.

**Case Study #36**

Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments.

The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide as per the provisions of the Indian Contract Act, 1872.

**Ans**

Invitation to offer: The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer. The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made



an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell.

### **Case Study #37**

Mr. B makes a proposal to Mr. S by post to sell his house for ₹ 10 lakhs and posted the letter on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020. He reads the letter on 13th April 2020.

Mr. S sends his letter of acceptance on 16th April 2020 and the letter reaches Mr. B on 20th April 2020. On 17th April Mr. S changed his mind and sends a telegram withdrawing his acceptance. Telegram reaches to Mr. B on 19th April 2020.

Examine with reference to the Indian Contract Act, 1872:

- (i) On which date, the offer made by Mr. B will complete?
- (ii) Discuss the validity of acceptance.
- (iii) What would be validity of acceptance if letter of revocation and letter of acceptance reached together?

### **Ans**

(i) According to Section 4 of the Indian Contract Act, 1872, “the communication of offer is complete when it comes to the knowledge of the person to whom it is made”.

When a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made. Further, mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

In the given question, Mr. B makes a proposal by post to Mr. S to sell his house. The letter was posted on 10th April 2020 and the letter reaches to Mr. S on 12th April 2020 but he reads the letter on 13th April 2020.

Thus, the offer made by Mr. B will complete on the day when Mr. S reads the letter, i.e. 13th April 2020.

(ii) When communication of acceptance is complete: Where a proposal is accepted by a letter sent by the post, in terms of Section 4 of the Act, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.

Revocation of Acceptance: The acceptor can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

In the given question, when Mr. S accepts Mr. B’s proposal and sends his acceptance by post on 16th April 2020, the communication of acceptance as against Mr. B is complete on 16th April 2020, when the letter is posted. As against Mr. S acceptance will be complete, when the letter reaches Mr. B i.e. 20th April 2020. Whereas, acceptor, will be bound by his acceptance only when the letter of acceptance has reached the proposer.

The telegram for revocation of acceptance reached Mr. B on 19th April 2020 i.e. before the letter of acceptance of offer (20th April 2020). Hence, the revocation is absolute. Therefore, acceptance to an offer is invalid.



(iii) It will not make any difference even if the telegram of revocation and letter of acceptance would have reached on the same day, i.e. the revocation then also would have been absolute. As per law, acceptance can be revoked any time before the communication of acceptance is complete. Since revocation was made before the communication of acceptance was complete and communication can be considered as complete only when the letter of acceptance reaches the proposer i.e. Mr. B.

### **Case Study #38**

Mr. X a businessman has been fighting a long drawn litigation with Mr. Y an industrialist. To support his legal campaign he enlists the services of Mr. C a Judicial officer stating that the amount of ₹10 lakhs would be paid to him if he does not take up the brief of Mr. Y. Mr. C agrees but, at the end of the litigation Mr. X refuses to pay to Mr. C. Decide whether Mr. C can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872?

### **Ans**

The problem as asked in the question is based on Section 10 of the Indian Contract Act, 1872. This Section says that all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void. Further, Section 23 also states that every agreement of which the object is unlawful is void.

Accordingly, one of the essential elements of a valid contract in the light of the said provision is that the agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

The given instance is a case of interference with the course of justice and results as opposed to public policy. This can also be called as an agreement in restraint of legal proceedings. This agreement restricts one's right to enforce his legal rights. Such an agreement has been expressly declared to be void under section 28 of the Indian Contract Act, 1872. Hence, Mr. C in the given case cannot recover the amount of ₹10 lakh promised by Mr. X because it is a void agreement and cannot be enforced by law.

### **Case Study #39**

State with reason(s) whether the following agreements are valid or void:

- (i) A clause in a contract provided that no action should be brought upon in case of breach.
- (ii) 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.
- (iii) X offers to sell his Maruti car to Y. Y believes that X has only Wagon R Car but agrees to buy it.
- (iv) 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.

### **Ans**

(i) The given agreement is void.

Reason: As per Section 28 of the Indian Contract Act, 1872, this clause is in restraint of legal proceedings because it restricts both the parties from enforcing their legal rights.

Note: Alternatively, as per Section 23 of the Indian Contract Act, 1872, this clause in the agreement defeats the provision of law and therefore, being unlawful, is treated as void.



(ii) 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. 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.

(iii) 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.

(iv) 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. 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.

#### **Case Study #40**

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

(i) Whether L can compel only Y to pay the entire loan of ₹ 90,000?

(ii) Whether L can compel only the legal representatives of Y to pay the loan of ₹ 90,000, if X, Y and Z died?

(iii) Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?

#### **Ans**

(i) Yes, L can compel only Y to pay ₹ 90,000/- since as per Section 43 of the Indian Contract Act, 1872, 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.

(ii) As per Section 42, when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representatives of all jointly must fulfill the promise.

In the instant case, if X, Y and Z died then the legal representatives of all (i.e. X, Y and Z) shall be liable to pay the loan jointly. L cannot compel only the legal representatives of Y to pay the loan of ₹ 90,000.

(iii) According to Section 44, where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

In this case, the release of X does not discharge Y and Z from their liability. Y and Z remain liable to pay the entire amount of ₹ 90,000 to L. And though X is not liable to pay to L, but he remains liable to pay to Y and Z i.e. he is liable to make the contribution to the other joint promisors.



### Case Study #41

Rahul goes to super market to buy a washing machine. He selects a branded washing machine having a price tag of ₹ 15000 after a discount of ₹ 3000. Rahul reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay ₹ 18000." Rahul got angry and insists for ₹ 15000.

State with reasons whether under Indian Contract Act, 1872, Rahul can enforce the cashier to sale at discounted price i.e. ₹ 15000.

### Ans

An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Rahul reaches to super market and selects a washing machine with a discounted price tag of ₹ 15000 but cashier denied to sale at discounted price by saying that discount is closed from today and request to make full payment. But Rahul insists to sale at discounted price.

On the basis of above provisions and facts, the price tag with washing machine was not offer. It is merely an invitation to offer. Hence, it is the Rahul who is making the offer not the super market. Cashier has right to reject the Rahul's offer. Therefore, Rahul cannot enforce cashier to sale at discounted price.

### Case Study #42

Rohan 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 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?

### Ans

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-

- (i) Where the restraint is to refrain from carrying on a similar business
- (ii) The restraint should be within the specified local limits
- (iii) The restraint should be not to carry on the similar business after sale of goodwill to the buyer for a price
- (iv) 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.



**Case Study #43**

Mr. Shekhar wants to sell his car. For this purpose, he appoints Mr. Nadan, a minor as his agent. Mr. Shekhar instructs Mr. Nadan that car should not be sold at price less than Rs. 1,00,000. Mr. Nadan ignores the instruction of Mr. Shekhar and sells the car to Mr. Masoom for Rs. 80,000. Explain the legal position of contract under the Indian Contract Act, 1872 whether:

- (i) Mr. Shekhar can recover the loss of Rs. 20,000 from Mr. Nadan?
- (ii) Mr. Shekhar can recover his car from Mr. Masoom?

**Ans**

According to the provisions of Section 11 of the 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. Shekhar appoints Mr. Nadan, a minor as his agent to sale his car. Mr. Shekhar clearly instructed to Mr. Nadan that the minimum sale price of the car should be Rs. 1,00,000 yet Mr. Nadan sold the car to Mr. Masoom for Rs. 80,000.

(i) Considering the facts, although the contract between Mr. Shekhar and Mr. Nadan is valid, Mr. Nadan will not be liable to his principal for his acts. Hence, Mr. Shekhar cannot recover the loss of Rs. 20,000.

(ii) Further, Mr. Masoom purchased the car from agent of Mr. Shekhar, he got good title. Hence, Mr. Shekhar cannot recover his car from Mr. Masoom.

**Case Study #44**

Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2020. (i) ` 12,120 which was due in May 2016. (ii) ` 5,650 which was due in August 2018 (iii) ` 9,680 which was due in May 2019. Mr. Murari made payment on 1st April 2020 as below without any notice of how to appropriate them:

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

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

**Ans**

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

In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence cheque of Rs. 9,680 will be appropriated against the bill of ` 9,680 which was due in May 2019.

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

Hence, Mr. Girdhari can appropriate the same against the debt of Rs. 12,120 which was due in 2016 and balance against Rs. 5650 which was due in August 2018.





#### Case Study #45

Mr. Pratham applied for a job as principal of a school. The school management decided to appoint him. One member of the school management committee privately informed Mr. Pratham that he was appointed but official communication was not given from the school. Later, the management of the school decided to appoint someone else as a principal. Mr. Pratham filed a suit against the school for cancellation of his appointment and claimed damages for loss of salary. State with reasons, will Mr. Pratham be successful in suit filed against school under the Indian Contract Act, 1872?

#### Ans

As per the rules of acceptance, the acceptance should be communicated to offeror by offeree himself or his authorized agent. Communication of acceptance by third person cannot be concluded in valid acceptance.

In the instant case, Mr. Pratham applied for a job as principal of a school and one member of the school management committee privately informed Mr. Pratham that he was appointed. Later, the management of the school appointed someone else as a principal.

On the basis of above provisions and facts, communication of appointment of Mr. Pratham should be made by school management committee or any authorised agent. The communication by third person cannot be termed as communication of acceptance. Therefore, no valid contract was formed between Mr. Pratham and school and Mr. Pratham cannot file a suit against the school for cancellation of his appointment.

#### Case Study #46

Rahul, a minor, falsely representing his age, enters into an agreement with a shopkeeper for a loan amount for purchasing a laptop. He gave his expensive watch as a security and took a loan of ₹ 40,000. He was very happy to get ₹ 40,000 and quickly went to the market and purchased a laptop worth ₹ 30,000. He happily spent the rest of the amount with his friends on a pleasure trip.

Later on, Rahul realized that his watch was an expensive watch and he should not have given like this to the shopkeeper. So, he went back to the shopkeeper and asked for his watch back. Also, he refused to repay the loan amount. The shopkeeper disagrees to this and files a case against minor for recovery of the loan amount. Can the shopkeeper succeed in recovering the loan amount under the Indian Contract Act, 1872?

#### Ans

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 ₹ 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.



### Case Study #47

Mr. X was a Disk Jockey at a five star hotel bar. As per the contract, he is supposed to perform every weekend (i.e. twice a week). Mr. X will be paid ₹ 1500 per day. However, after a month, Mr. X willfully absents himself from the performance. (i) Does the hotel have the right to end the contract? (ii) If the hotel sends out a mail to X that they are interested to continue the contract and X accepts, can the hotel rescind the contract after a month on this ground subsequently? (iii) In which of the cases – (termination of contract or continuance of contract) can the hotel claim damages that it has suffered as a result of this breach?

### Ans

By analyzing Section 39 of the Indian Contract Act 1872, it is understood that when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee) (a) To terminate the contract (b) To indicate by words or by conduct that he is interested in its continuance. In either of the two cases, the promisee would be able to claim damages that he suffers. In the given case, (i) Yes, the hotel has the right to end the contract with Mr. X, the DJ. (ii) The hotel has the right to continue the contract with X. But once this right is exercised, they cannot subsequently rescind the contract on this ground subsequently. (iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

### Case Study #48

Mr. Ram Lal Birla was a big businessman of city Pune having two sons and one married daughter. He decided to gift his one house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both of them died. Later, his daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

### Ans

Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other.

In the instant case, the transfer of house made by Mr. Ram Lal Birla on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable and his daughter cannot get the house as gift under the Indian Contract Act, 1872.

### Case Study #49

PQR, a hospital in Delhi, recruits Dr. A, on contract basis for a period of 3 months. The hospital management promises to pay Dr. A, a lumpsum amount of ₹ 1,00,000 if Dr. A test positive for noval corona virus (Covid 19) during the contract period of 3 months.

Identify the type of contract and highlight the rule of enforcement. Also, what will happen if Dr. A does not contract Covid 19.

### Ans

Section 31 of the Indian Contract Act, 1872 provides that “A contract to do or not to do something, if some event, collateral to such contract, does or does not happen” is a Contingent Contract.

Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event



has not happened, or if, before the time fixed, such event becomes impossible In the instant case, the contract between PQR hospital & Dr. A is a Contingent Contract because the promisor, PQR hospital need to perform his obligation of paying Dr. A, the lumpsum amount of ₹ 1,00,000, only if he contracts with Covid 19 within a span of 3 months. In Case, if Dr. A does not contract Covid 19, then the contract stands void automatically

### Case Study#50

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

### Ans

Joint promisors (Section 42 of the Indian Contract Act, 1872) When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise. Any one of joint promisors may be compelled to perform (Section 43) As per Section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

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

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

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

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

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

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

### Case Study #51

X aged 16 years borrowed a loan of ₹ 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.

### Ans

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.

According to Section 68 of the Act, a claim for necessaries 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 necessaries supplied to him. Hence, the lender cannot file a suit against X for recovery of the loan as it is not enforceable by law.



**Case Study #52**

J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J.

**Ans**

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

**Case Study #53**

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 ₹ 50,000 from B? Discuss with reference to the provisions of Indian Contract Act, 1872.

**Ans**

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.

**Case Study #54**

Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition at Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered at the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872?

**Ans**

As per Section 73 to 75 of Indian Contract Act, 1872, Damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale). Therefore, when breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.



In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

### Case Study #55

Chandan was suffering from some disease and was in great pain. He went to Dr. Jhunjhunwala whose consultation fee was ₹ 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?

### Ans

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.

### Case Study #56

Mr. Aseem is a learned advocate. His car was stolen from his house. He gave an advertisement in newspaper that he will give the reward of ₹ 10,000 who will give the information about his car. Mr. Vikram reads the advertisement and on making some efforts got the stolen car and informed Mr. Aseem. Mr. Aseem found his car but denied giving reward of ₹ 10,000 to Mr. Vikram with the words, “An advertisement in newspaper is just an invitation to make offer and not an offer. Hence, he is not liable to make the reward.” State with reasons whether under Indian Contract Act, 1872, Mr. Vikram can claim the reward of ₹ 10,000.

### Ans

An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation. But there is an exception to above provisions. When advertisement in newspaper is made for reward, it is the general offer to public.

On the basis of above provisions and facts, it can be said that as advertisement made by Mr. Aseem to find lost car is an offer, he is liable to pay ₹ 10,000 to Mr. Vikram.



**Case Study #57**

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

- (a) Can Mr. Singhania terminate the contract with Mr. Sonu?
- (b) What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhania allows him to perform without saying anything?
- (c) What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhania allows him to perform without saying anything?

**Ans**

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

Therefore, in the instant case,

- (a) As Mr. Sonu could not perform as per the contract, Mr. Singhania can repudiate the contract
- (b) In the second situation, as Mr. Singhania allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhania had given his assent to continue the contract. Mr. Singhania cannot terminate the contract however he can claim damages from Mr. Sonu.
- (c) In case Mr. Singhania allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhania had given his assent for performance by third party. Now Mr. Singhania cannot terminate the contract nor can claim any damages from Mr. Sonu.

**Case Study #57**

Mr. Murti was travelling to Manali with his wife by bus of Himalya Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid way in cold night. Driver advised the passenger to get the shelter in nearest hotel which was at a distance of only one kilometre from that place. The wife of Mr. Murti caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. For damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Murti would get compensation for which he filed the suit?

**Ans**

Section 73 of Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the instant case, Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

On the basis of above provisions and facts of the case, it can be said that Mr. Murti can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.



**Case Study #58**

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?

**Ans**

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:

- (i) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (ii) the active concealment of a fact by one having knowledge or belief of the fact;
- (iii) a promise made without any intention of performing it;
- (iv) any other act fitted to deceive;
- (v) 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.

**Case Study #59**

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?

**Ans**

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.

**Case Study #60**

Mr. Joy owns two flats in a building. He wanted to sell flat no.101 to Mr. Roy. Mr. Joy offered to sell his flat no. 101 to Mr. Roy, but Mr. Roy thought that Mr. Joy wanted to sell flat no. 102 and said yes for the agreement. Considering the provisions of Indian Contract Act, 1872, discuss the validity of such a contract.



**Ans**

Section 10 of Indian Contract Act, 1872 laid down the essential elements of a valid contract. One of the essential elements of a valid contract is free consent. Consent is an express willingness or giving voluntary permission or agreeing to something. Section 13 further clarifies "two or more persons are said to consent when they agree upon the same thing in the same sense"

In the present case, both the parties have given a free consent but they are not consenting for the same thing in the same sense. Mr. Joy wants to sell flat no. 101 and Mr. Roy has agreed to the contract thinking that it's flat no. 102.

Hence, the agreement would be invalidated at the inception (beginning) stage itself because both the parties did not agree about a thing (sale of flat) in the same sense. Hence, both the parties did not have mutual consent for the contract; therefore it is not a valid contract.

**Case Study #61**

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

**Ans**

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

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

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

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

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

**Case Study #62**

In the light of the provisions of the Indian Contract Act, 1872, answer the following:

(i) 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?

(ii) Give the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract.

**Ans**

(i) 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.

(ii) Vindictive or Exemplary damages These damages may be awarded only in two cases:

(a) for breach of promise to marry because it causes injury to his or her feelings;

and





(b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.

### **Case Study #63**

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 ₹ 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.

### **Ans**

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).

In the present case, Karan has examined the study table before purchasing it from Mr. X and could not find any defect in the table as it was concealed by Mr. X.

On the basis of above provisions and facts of the case, Karan can rescind the contract and claim compensation for the loss suffered due to fraud done by Mr. X.

### **Case Study #64**

What will be rights with the promisor in following cases? Explain with reasons:

(a) Mr. X promised to bring back Mr. Y to life again.

(b) A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15 th March but due to riots in between reached A on 19th March.

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

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

### **Ans**

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

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

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

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

### **Case Study #65**

"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.

### **Ans**

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).

### **Case Study #66**

Mr. Ram Lal Birla was a big businessman of Pune City having two sons and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident, and both of them died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

### **Ans**

Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other. In other words, a written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.

In the instant case, the transfer of house made by Mr. Ram Lal Birla on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable.

### **Case Study #67**

Explain the type of contracts in the following agreements under the Indian Contract Act, 1872:

- (a) A coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so.
- (b) Obligation of finder of lost goods to return them to the true owner.
- (c) A contract with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is affected, the fire caught in the factory, and everything was destroyed.

### **Ans**

(a) It is an implied contract and A must pay for the services of the coolie detailed by him.

**Implied Contracts:** Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

(b) Obligation of finder of lost goods to return them to the true owner cannot be said to arise out

of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

**Quasi-Contract:** A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract, but law imposes a contract upon the parties.

(c) The above contract is a void contract.



Void Contract: Section 2 (j) states as follows: “A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable”. Thus, a void contract is one which cannot be enforced by a court of law.

### Case Study #68

Seema was running a boutique in New Delhi. She was to deliver some cloth to her friend Kiran who was putting up an exhibition at Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway’s authorities. The goods were delivered at the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits?

### Ans

Section 73-75 of Indian Contract Act, 1872: Damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale). Therefore, when breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were brought to the knowledge defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

In the instant case, the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Special damages are allowed only when the special circumstances are made aware. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

### Case Study #69

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

### Ans

Joint promisors (Section 42 of the Indian Contract Act, 1872) - When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise. Any one of joint promisors may be compelled to perform (Section 43) As per Section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. In the instant case, A, B, C and D have jointly promised to pay ` 6,00,000 to F. B and C become insolvent. B was unable to pay any amount and C could pay only ` 50,000. A is compelled to pay the whole amount to F.

Hence, A is entitled to receive ` 50,000 from C and ` 2,75,000 from D, as worked out below:  
From C ` 50,000= (C’s Liability ` 1,50,000 Less: Amount he could not pay ` 1,00,000). From D ` 2,75,000= (D’s Liability ` 1,50,000+1/2 of liability of B (Loss) (1,50,000\*1/2) i.e. ` 75,000+1/2 of C’s liability (Loss) (1,00,000\*1/2) i.e., ` 50,000) In other words, equal proportion i.e., `



5,50,000 (i.e. ₹6,00,000-₹50,000) / 2. Thus, total amount A can receive from C and D comes to ₹3,25,000 (50,000+2,75,000)

### Case Study #70

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

(i) X aged 16 years borrowed a loan of ₹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.

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

### Ans

(i) 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. 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.

(ii) 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.

### Case Study #71

Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ₹10,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

(i) Whether the management of Shital Vidya Mandir has right to terminate the contract?

(ii) If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?

(iii) Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases?



**Ans**

Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiescence in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case,

(i) Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.

(ii) In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.

(iii) As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

**Case Study #72**

"Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas 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". Explain the statement by differentiating between liquidated damages and penalty with reference to provisions of the Indian Contract Act, 1872.

**Ans**

Liquidated damages is a genuine pre-estimate of compensation of damage for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculation 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. Distinction between liquidated damages and penalty Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of as laid down below may be helpful.

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
3. The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
4. The essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.
5. English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceed the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.



**Case study #73**

Miss Shakuntala puts an application to be a teacher in the school. She was appointed by the trust of the school. Her friend who works in the same school informs her about her appointment informally. But later due to some internal reasons her appointment was cancelled. Can Miss Shakuntala claim for damages?

**Ans**

No, Miss Shakuntala cannot claim damages. As per Section 4, communication of acceptance is complete as against proposer when it is put in the course of transmission to him. In the present case, school authorities have not put any offer letter in transmission. Her information from a third person will not form part of contract.case

**Case study #74**

State whether there is any contract in following cases:

- (a) A engages B to do certain work and remuneration to be paid as fixed by C.
- (b) A and B promise to pay for the studies of their maid's son
- (c) A takes a seat in public bus.
- (d) A, a chartered accountant promises to help his friend to file his return.

**Ans**

- (a) It is a valid express contract
- (b) It is not a contract as it is a social agreement
- (c) It is an implied contract. A is bound to pay for the bus fare.
- (d) It is a social agreement without any intention to create a legal relationship.

**Case study #75**

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

Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH.

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

**Ans**

In terms of the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. Referring to the above provision, we can analyse the situation as under. The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfil his contract and is ancillary to the contract for the sale of the Motor Car.



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

#### **Case study #75**

X, a minor was studying in M.Com. in a college. On 1st July, 2019 he took a loan of ₹ 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2019. X possesses assets worth ₹ 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed.

#### **Ans**

Yes, B can proceed against the assets of X. According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B. the carriage against the rent due from

#### **Case Study #76**

P left his carriage on D's premises. Landlord of D seized the carriage against the rent due from D. P paid the rent and got his carriage released. Can P recover the amount from D?

#### **Ans**

Yes, P can recover the amount from D. Section 69 states a person who is interested in the payment of money which another person is bound by law to pay, and who therefore pays it, is entitled to get it reimbursed by the other. In the present case, D was lawfully bound to pay rent. P was interested in making the payment to D's landlord as his carriage was seized by him. Hence being an interested party P made the payment and can recover the same from D.

#### **Case Study #77**

State which of the following agreements are valid contract under the Indian Contract Act, 1872?

- A, who owns two cars is selling red car to B. B thinks he is purchasing the black car.
- A threatened to shoot B if he (B) does not lend him ₹ 2,00,000 and B agreed to it.
- A agrees to sell his house to B against 100 kgs of cocaine (drugs).
- A ask B if he wants to buy his bike for ₹ 50,000. B agrees to buy bike.
- Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident.

#### **Ans**

- A, who owns two cars is selling red car to B. B thinks he is purchasing the black car. There is no consensus ad idem and hence not a valid contract.
- A threatened to shoot B if he (B) does not lend him ₹ 2,00,000 and B agreed to it. Here the agreement is entered into under coercion and hence not a valid contract.
- A agrees to sell his house to B against 100 kgs of cocaine (drugs). Such agreement is illegal as the consideration is unlawful.
- A ask B if he wants to buy his bike for ₹ 50,000. B agrees to buy bike. It is agreement which is enforceable by law. Hence, it is a valid contract.
- Mr. X agrees to write a book with a publisher. But after few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.



**Case Study #78**

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

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

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

**Ans**

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

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

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

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

**Case Study #79**

Mr. Shyam Mundra was a big businessman having one son and one married daughter. He decided to gift his house to his daughter. For this purpose, he called his lawyer at his house and made a written document for such gift. The lawyer advised him to get the transfer document properly registered. When they both were going for registration of document, they met with an accident and both died. Later, the daughter found the document and claimed the house on the basis of that document. Explain, whether she can get the house as gift under the Indian Contract Act, 1872?

**Ans**

Section 25 of Indian Contract Act, 1872 provides that an agreement made without consideration is valid if it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other. In other words, a written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.

In the given problem, the transfer of house made by Mr. Shyam Mundra on account of natural love and affection between the parties standing in near relation to each other is written but not registered. Hence, this transfer is not enforceable.

**Case Study #80**

X agrees to pay Y ₹ 1,00,000/-, if Y kills Z. To pay Y, X borrows ₹ 1,00,000/- from W, who is also aware of the purpose of the loan. Y kills Z but X refuses to pay. X also to repay the loan to W. Explain the validity of the contract.

- (i) Between X and Y.
- (ii) Between X and W





**Ans**

Illegal Agreement: It is an agreement which the law forbids to be made. As an essential condition, the lawful consideration and object is must to make the agreement valid. (Section 10). As per Section 23 of the Indian Contract Act, 1872, an agreement is illegal and void, if the consideration and object is unlawful / contrary to law i.e. if forbidden by law. Such an agreement is void and is not enforceable by law. Even the connected agreements or collateral transactions to illegal agreements are also void.

In the present case,

(i) X agrees to give ` 1,00,000 to Y if Y kills Z. Thus, the agreement between X and Y is void agreement being illegal in nature.

(ii) X borrows ` 1,00,000 from W and W is also aware of the purpose of the loan. Thus, the agreement between X and W is void as the connected agreements of an illegal agreements are also void.

**Case Study #81**

Mr. Y aged 21 years, lost his mental balance after the death of his parents in an accident. He was left with his grandmother aged 85 years, incapable of walking and dependent upon him. Mr. M their neighbour, out of pity, started supplying food and other necessities to both of them. Mr. Y and his grandmother used to live in the house built by his parents. Mr. M also provided grandmother some financial assistance for her emergency medical treatment. After supplying necessities to Mr. Y for four years, Mr. M approached the former asking him to payback ` 15 Lakhs inclusive of ` 7 Lakhs incurred for the medical treatment of the lady (grandmother). Mr. Y pleaded that he has got his parent's jewellery to sell to a maximum value of ` 4 Lakhs, which may be adjusted against the dues. Mr. M refused and threatened Mr. Y of legal suit to be brought against for recovering the money.

Now, you are to decide upon based on the provisions of the Indian Contract Act, 1872:

(i) Will Mr. M succeed in filing the suit to recover money? Elaborate the related provisions?

(ii) What is the maximum amount- of money that can be recovered by Mr. M?

(iii) Shall the provisions of the above act also apply to the medical treatment given to the grandmother?

**Ans**

(i) Claim for necessities supplied to persons incapable of contracting (Section 68 of the Indian Contract Act, 1872):

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

In the instant case, Mr. M supplied the food and other necessities to Mr. Y (who lost his mental balance) and Mr. Y's grandmother (incapable of walking and dependent upon Mr. Y), hence, Mr. M will succeed in filing the suit to recover money.

(ii) Supplier is entitled to be reimbursed from the property of such incapable person. Hence, the maximum amount of money that can be recovered by Mr. M is ` 15 Lakhs and this amount can be recovered from Mr. Y's parent's jewellery amounting to ` 4 Lakhs and rest from the house of Y's Parents. (Assumption: Y has inherited the house property on the death of his parents)

(iii) Necessaries will include the emergency medical treatment. Hence, the above provisions will also apply to the medical treatment given to the grandmother as Y is legally bound to support his grandmother.



### Case Study #82

Ashwin goes to super market to buy a Air Conditioner. He selects a branded Air Conditioner having a price tag of ₹ 40,000 after a discount of ₹ 3000. Ashwin reaches at cash counter for making the payment, but cashier says, “Sorry sir, the discount was upto yesterday. There is no discount from today. Hence you have to pay ₹ 43,000.” Ashwin got angry and insists for ₹ 40,000. State with reasons whether under Indian Contract Act, 1872, Ashwin can enforce the cashier to sell at discounted price i.e. ₹ 40,000.

### Ans

An invitation to offer is different from offer. Quotations, menu cards, price tags, advertisements in newspaper for sale are not offer. These are merely invitations to public to make an offer. An invitation to offer is an act precedent to making an offer. Acceptance of an invitation to an offer does not result in the contract and only an offer emerges in the process of negotiation.

In the instant case, Ashwin reaches to super market and selects a Air Conditioner with a discounted price tag of ₹ 40,000 but cashier denied to sell at discounted price by saying that discount is closed from today and request to make full payment. But Ashwin insists to purchase at discounted price.

On the basis of above provisions and facts, the price tag with Air Conditioner was not offer. It is merely an invitation to offer. Hence, it is the Ashwin who is making the offer not the super market. Cashier has right to reject the Ashwin’s offer. Therefore, Ashwin cannot enforce cashier to sell at discounted price.

### Case Study #83

Shital was a classical dancer. She entered into an agreement with Sharad Vidya Mandir for 50 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ₹ 8,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

- (i) Whether the management of Sharad Vidya Mandir has right to terminate the contract?
- (ii) If the management of Sharad Vidya Mandir informed Shital about its continuance, can the management still rescind the contract after a month on this ground subsequently?
- (iii) Can the Sharad Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases?

### Ans

Section 39 of the Indian Contract Act, 1872 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract unless he had signified, by words or conduct his acquiescence in its continuance. Further, in terms of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract. Therefore, in the instant case,

- (i) Since, Shital could not perform as per the terms of contract, Sharad Vidya Mandir can terminate the contract.
- (ii) In the second situation, the management of Sharad Vidya Mandir informed Shital about the continuance of the contract. Hence, the management cannot rescind the contract after a month on this ground subsequently.
- (iii) As per Section 75, Sharad Vidya Mandir can claim damages that it has suffered because of this breach in part (i).



**Case Study #84**

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 ₹ 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.

- (i) By filing a case against Paridhee, a minor for recovery of outstanding amount with interest?
- (ii) By filing a case against Mr. Ram, father of Paridhee for recovery of outstanding amount?
- (iii) By filing a case against Paridhee, a minor for recovery of outstanding amount after she attains majority?

**Ans**

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.

(i) By following the above provision, Mr. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, a minor.

(ii) 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.

(iii) 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. Mittal will not succeed in recovering the outstanding amount by filing a case against Paridhee, after she attains majority.

**Case Study #85**

Rohan found a wallet in a restaurant. He enquired all the customers present there but the true owner could not be found. He handed over the same to the manager of the restaurant to keep the wallet till the true owner is found. After a week, Rohan went back to the restaurant to enquire about the wallet. The manager refused to return it to Rohan, saying that it did not belong to him. In the light of the Indian Contract Act, 1872, can Rohan recover the wallet from the Manager?

**Ans**

Responsibility of finder of goods (Section 71 of the Indian Contract Act, 1872): A person who find goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee.

Thus, a finder of lost goods has:

- (i) to take proper care of the property as man of ordinary prudence would take
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

In the light of the above provisions, the manager must return the wallet to Rohan, since Rohan is entitled to retain the wallet found against everybody except the true owner.



**Case Study #86**

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

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

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

Now you decide:

(i) Whether the contention of Mr. Mukesh correct or otherwise as per the provisions of the Indian Contract Act, 1872?

(ii) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?

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

**Ans**

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

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

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

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

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

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

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

**Case Study #87**

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.



**Ans**

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.

**Case Study #88**

Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2022, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of ₹ 70,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2022 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2022 for which Mr. Vikas did not agree. On 1st August, 2022, Mr. Gaurav claimed compensation of ₹ 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of ₹ 70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention.

**Ans**

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

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

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

**Case Study #89**

Mr. Harish was travelling to Shimla with his wife by bus of Himalya Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid-way in cold night. The driver advised the passengers to get to the shelter in the nearest hotel which was at a distance of only one kilometer from that place. The wife of Mr. Harish caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Harish filed the suit against Himalya Travels Pvt. Ltd. For damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Harish would get compensation for which he filed the suit under the Indian Contract Act, 1872?

**Ans**

Section 73 of Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose



in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. In the instant case, Mr. Harish filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. On the basis of above provisions and facts of the case, it can be said that Mr. Harish can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

### **Case Study #90**

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:

- (i) If Pradeep says nothing about the unsoundness of the horse to Rakesh.
- (ii) If Pradeep says nothing about it to Rakesh who is Pradeep's son.
- (iii) If Rakesh says to Pradeep "If you do not deny it, I shall assume that the horse is sound." Pradeep says nothing.

### **Ans**

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,

- (i) 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.
- (ii) 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.
- (iii) This contract is not valid since as per section 17, Pradeep's silence is equivalent to speech and hence amounts to fraud.

### **Case Study #91**

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 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.

### **Ans**

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, Neeraj could not rescind the contract, as his acceptance to the offer of Rahul to bear 45% of the cost of repairs impliedly amount to final acceptance of the sale.



### Case Study #92

Radha invited her ten close friends to celebrate her 25th birthday party on 1st January, 2023 at 7.30 P.M. at a well-known "Hi-Fi Restaurant" at Tonk Road, Jaipur. All invited friends accepted the invitation and promised to attend the said party. On request of the hotel manager, Radha deposited ₹ 5,000/- as non-refundable security for the said party. On the scheduled date and time, three among ten invited friends did not turn up for the birthday party and did not convey any prior communication to her. Radha, enraged with the behaviour of the three friends, wanted to sue them for loss incurred in the said party. Advise as per the provisions of the Indian Contract Act, 1872.

Would your answer differ if the said party had been a "Contributory 2023 New Year celebration Party" organized by Radha?

### Ans

As per one of the requirements of Section 10 of the Indian Contract Act, 1872, there must be an intention on the part of the parties to create legal relationship between them. Social or domestic agreements are not enforceable in court of law and hence they do not result into contracts.

In the instant case, Radha cannot sue her three friends for the loss incurred in the said party as the agreement between her and her ten friends was a social agreement, and the parties did not intend to create any legal relationship.

If the said party organised by Radha had been a "Contributory 2023 New year celebration party", then Radha could have sued her three friends for the loss incurred in the said party as the agreement between her and her friends would have legal backing;

on the basis of which Radha deposited the advance amount and the parties here intended to create legal relationship.

### Case Study #93

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

### Ans

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.

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. A and Mr. B is voidable at the option of Mr. B as it was induced by undue influence by Mr. A and therefore Mr. B can sue Mr. A.

### Case Study #94

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

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



**Ans**

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

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

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

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

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

