CONTRACT ACT

IMPORTANT QUESTIONS WITH SUGGESTED ANSWERS

Question 1:
Discuss briefly the position of a minor with regard to the contracts entered into by him.

Answer

Position of a minor:
A minor is a person who has not completed eighteen years of age. The Contract Act puts minor in a different position as compared to others which may be discussed as under:

i. A contract by a minor is altogether void. (Mohiri Bibi vs. Dharmodas Ghose). A minor is incapable of giving a promise imposing a legal obligation.

ii. A minor can be a promisee or a beneficiary. He can hold other parties liable for the performance of their promise.

iii. A minor cannot be a partner in a firm. However, he may be admitted to the benefits of partnership with the consent of all the partners.

iv. There is no estoppel against the minor. He can always plead minority in a suit attempting to hold him liable, no matter he might have earlier misrepresented himself to be major in age.

v. A minor cannot ratify contracts which he might have made during minority, after becoming major.

vi. A minor’s agreement being void cannot be specifically enforced. However, the estate of a minor can be held liable for the necessities supplied to him or to his dependents suited to his status in life.

vii. Though the agreement of a minor is void, his guardian can, under certain circumstances and for the benefit of minor, enter into contracts.

viii. A minor can be an agent, but not a principal.

ix. A minor can hold property, fully paid shares and can seek contracts of employment or apprenticeship.

x. The principle of restitution does not apply against a minor.

Question 2
Ramesh, aged 16 years, was studying in an engineering college. On 1 March, 2011 he took a loan of Rs.1 lakh from Suresh for the payment of his college fee and agreed to pay by 30th May, 2012. Ramesh possesses assets worth Rs. 10 lakhs. On due date Ramesh fails to pay back the loan to Suresh. Suresh now wants to recover the loan from Ramesh out of his assets. Whether Suresh would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

Answer

According to Section 11 of the Indian Contract Act, 1872, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor.

Thus Ramesh who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmodas Ghose].

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 property. The liability of minor is only to the extent of the minor’s property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity.

Thus, according to the above provision, Suresh will be entitled to recover the amount of loan given to Ramesh for payment of the college fees from the property of the minor.
Question 3
State with reason whether the following statement is correct or incorrect:

a) ‘An agreement entered into with a minor may be ratified on his attaining majority’.

b) ‘A promissory note duly executed in favour of minor is void’.

c) ‘An agreement with an alien friend is valid but an agreement with an alien enemy is void’.

Answer

a) Incorrect.

In accordance with the provisions of the Indian Contract Act, 1872 as contained in Section 11, “every person is competent to contract who is of the age of majority ...........” Accordingly, a person who is minor is incompetent to contract. The law declares that an agreement entered into with a minor is void. As a minor’s agreement is void ab initio, he cannot validate it by ratification on attaining his majority. Ratification in law is treated as equivalent to a validation of previous authority, and it follows that, as a general rule, a person or body of persons, not competent to authorize an act, can not give it validity by ratifying it. Of course, such a person (minor) can enter into a fresh agreement, but the earlier amount received cannot be treated as consideration for the new agreement. (Relevant cases on this point are Mohiri Bibi vs. D.D. Ghosh and Nazir Ahmed vs. Jeevandas).

b) Incorrect: As per the Indian Contract Act, 1872, minor is not competent to contract, but he can be a beneficiary. In this case, the minor is a beneficiary. Hence the Promissory Note is not void and the minor at his option can enforce it.

c) Correct: An agreement entered into an alien enemy is void whereas if the agreement is entered into with an alien friend it is a perfectly valid agreement, provided it satisfies the all other essential conditions of a contract.

Question 4
What do you understand by “coercion” and “undue influence” under the provisions of the Indian Contract Act, 1872? What are the differences between them?

Answer

**Coercion and Undue Influence – Meaning and Differences:**

“Coercion” is the committing, or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. (Section 15, 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 uses that position to obtain an unfair advantage of the other. A person is deemed to be in a position to dominate the will of the other, when he holds authority, real or apparent over the other, or when he stands in a fiduciary relation to other (Section 16, The Indian Contract Act, 1872)

**DIFFERENCES BETWEEN COERCION AND UNDUE INFLUENCE**

i. **Nature of action:** Coercion involves physical force and sometimes only threat. Undue influence involves only moral pressure.

ii. **Involvement of criminal action:** Coercion involves committing or threatening to commit any act prohibited or forbidden by law, or detention or threatening to detain a person or property. In undue influence there is no such illegal act involved.
iii. **Relationship between parties:** In coercion there need not be any relationship between parties; whereas in undue influence, there must be some kind of relationship between parties, which enables to exercise undue influence over the other.

iv. **Exercise by whom:** Coercion need not proceed from the promisor. It also need not be directed against the promisee. Undue influence is always exercised by one on the other, both of whom are parties to a contract.

v. **Enforceability:** Where there is coercion, the contract is voidable at the option of the party whose consent has been obtained by coercion. Where there is undue influence the contract is voidable or court may set it aside or enforce it in a modified form.

vi. **Position of benefits received:** In case of coercion, where the contract is rescinded by the aggrieved party any benefit received has to be restored back. In the case of undue influence, the court has discretion to pass orders for return of any such benefit or not to give any such directions.

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**Question 5**

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

**Answer**

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

A person is deemed to be in that position:

- when he holds authority, real or apparent over the other, or when he stands in a fiduciary relation to other.

When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence.

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.

In the instant case student was induced by his teacher to sell his brand new car to the teacher at a price less than the purchase price to secure more marks in the examination.

The relation subsisting between a teacher and student is such that one can dominate the will of other and the transaction in this case is also unconscionable as a brand new car has been sold at a price less than purchase price. A can thus sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872.

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**Question 6**

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

**Answer**

**Meaning of Undue Influence:**

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

A person is deemed to be in that position:

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

c) where a man who is in position to dominate the will of the other enters into contract with him and the transaction appears to be unconscionable, the burden of proving that it is fair, is on him, who is in such a position.

When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence [section 16(3)].

Every transaction where the terms are to the disadvantage of one of the parties need not necessarily be considered to be unconscionable. If the contract is to the advantage of one of the parties but the same has been made in the ordinary course of business the presumption of under influence would not be raised.

In the given problem, A applies to the banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence. As between parties on an equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. But this is not the situation in this problem, and therefore, there is no undue influence.

Question 7

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.

Answer

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

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].

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 amounts to final acceptance of the sale [Long v. Lloyd, (1958)].

Question 8

Do the following statements amount to involvement of fraud?

i. Where the vendor of a piece of land told a prospective purchaser that, in his opinion, the land can support 2000 heads of sheep whereas, in truth, the land could support only 1500 sheep.
ii. X bought shares in a company on the faith of a prospectus which contained an untrue statement that one Z was a director of the company. X had never heard of Z and the untrue statement of Z being a director was immaterial from his point of view. Can X claim damages on grounds of fraud?

Answer
i. The problem is based on the facts of the case Bisset vs Wilkinson (1927). In the given problem the vendor says that in his opinion the land could support 2000 heads of sheep. This statement is only an opinion and not a representation and hence cannot amount to fraud.

ii. The problem is based on the facts of the case Smith vs Chadwick (1884). In the problem though the prospectus contains an untrue statement that untrue statement was not the one that induced X to purchase the shares. Hence X cannot claim damages.

Question 9
List out the points of differences between Fraud and Misrepresentation.

Answer:
Fraud and Misrepresentation: Differences (Sections 17 and 18 of the Indian Contract Act, 1872)
1. Extent of Truth Varies: In case of fraud the person making the representation knows it fully well that his statement is untrue and false. In case of misrepresentation, the person making the statement believes it to be true which might later out to be untrue. In spite of this difference, the end result is that the other party is misled.

2. Right of the person concerned who suffers: Fraud not only enables the party to avoid the contract but the party is also entitled to bring action. Misrepresentation merely provides a ground for avoiding the contract and not for bringing an action in the court of law.

3. Action against the person making the Statement: In order to sustain an action for deceit, there must be proof of fraud. Fraud can be proved only by showing that a false statement was made knowing it to be false or without believing it to be true or recklessly without any care of truth. One is action against deceit and the other is action for recession of the contract. In the case of misrepresentation the person may be free from blame because of his innocence but still the contract cannot stand.

4. Defences available to persons: In case of misrepresentation, the fact that the plaintiff had means of discovering the truth by exercising ordinary diligence can be a good defence against the repudiation of the contract, whereas a defence cannot be set up in case of fraud other than fraudulent silence.

Question 10
M purchased a wrist watch from N, both believed that it was made with gold plaque. Hence, M paid a very high price for that. Later it was found that the wrist watch was not made so. State the validity of the contract

OR
X buys from Y a painting which both believe to be the work of an old master and for which X pays a high price. The painting turns out to be only a modern copy. Discuss the validity of the contract?

Answer
Section 20 of the Indian Contract Act provides that “when both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

In the given case the contract is absolutely void as there is a mutual mistake of both parties.