5 S.2(e) of the Indian Contract Act, 1872 (hereinafter referred to as ICA in all the answers) defines agreement as every promise and every set of promises forming the consideration for each set.

S.2(h) of ICA defines contract as an agreement enforceable by law.

Analysis of the present statement —

→ A plain perusal of the definitions lead to an inference that agreement is the genus and contract is the species. Before maturing into a contract, a transaction has to be "enforceable by law".

→ This phrase "enforceable by law" is not mentioned in ICA. But the same can be traced in the following provisions of ICA which lay down the conditions necessary to be fulfilled for entering into a contract after the agreement is completed.

(i) Competency — S.11 of ICA lays down the conditions for the qualification of parties. They should be major, of sound

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mind and not otherwise prohibited by law to which they are subjected. The age of majority is 18 years.

An agreement with a minor is void. (Mohri Bibee v. Dharmodas Ghose)

(ii) S.14, ICA provides that free consent must be furnished by the parties. To elucidate the scope of free consent further, S.15, S.16 S.17, S.18 and S.20, S.21 and S.22 are relevant. S.15 discusses the concept of coercion, undue influence, fraud, misrepresentation, mistake of fact and mistake of law in that order.

→ In the aforesaid circumstances, the contract shall be voidable at the instance of the party against whom the aforementioned acts have been exercised.

(iii) Consideration - S.2(d) defines it as an act or abstinence done by the promisee at the desire of the promisor. There is no defined adequate value. It depends upon parties.

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→ Except in few circumstances, S.25 of ICA provides that ~~u/s 2~~ without consideration a contract shall be void.

(iv) Unlawfulness of object — S.23 provides that agreement is void if the object is forbidden by law or defeats any law, if is allowed, is of fradulent nature or injurious to any person or property or is of immoral nature which defeats the public policy.

Conclusion

→ ~~Not~~ Every agreement does not qualify to be a valid contract unless the essential conditions under ICA are complied with.

(b) Contingent Contract — S.31 of ICA defines the term as, "A contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not occur".

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For eg – A contracts with B to buy his house only if B has a female child in future.

Enforcement

(i) Impossibility of future event – S. 32 provides that if an event becomes impossible, such contracts become void.

For eg – A agrees to pay B Rs 5000 if B cracks OPSC examination. B commits murder and is disqualified from appearing for the exam. Thus, it becomes an impossible event and the contract is void.

(ii) Impossibility of non-happening – S. 33 provides that if the event of non-happening becomes impossible, the contract shall be void.

For eg – X agrees to pay Y Rs 100 if a certain truck does not return. The contract can be enforced if the truck is confiscated or destroyed by act of God. But if it returns, the contract shall be void.

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(iii) Deemed impossibility — If the contingency of a contract is dependent upon a specific act to be performed by a person in future, the event shall be considered impossible if such person does anything to make it impossible. [S. 34, ICA]

who may perform contract

For eg - A agrees to B Rs 5000 if he marries C. B marries D. Unless they are divorced or D dies, it shall be impossible for B to marry D and thus the contract is void.

(iv) Fixation of time limit — S. 35 provides that if a certain future event does not happen or becomes void before the fixed time. (S. 35, para 1)

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For eg- X agrees to pay Rs 1000 to Z if a certain truck returns before 1st April, 2021. If the ~~truck~~ does not return before this date or ~~truck~~ is destroyed, the contract shall become void.

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(v) Fixation of time limit for non-happening of events — S.35, para 2 provides that where certain future event happens before the fixed time when it was stipulated not to happen, then it becomes void.

For eg - X agrees to pay Z Rs 1000 if a certain truck does not return before 1st April, 2021. If it returns, it shall be void.

(vi) Inherent impossibility of event - S.36 provides that whether or not the parties knew about the impossibility at the time of entering into the agreement, it shall be void, if it is impossible.

For eg - X agrees to pay Z Rs 1000 if two straight parallel lines intersect each other. It is void.

2 (a) Facts

→ A writes to B offering to sell him his house at a certain price.

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→ B at the same time and on the same day, writes a letter offering to buy the same house at the same price.

→ The two letters cross each others.

Issue - Is there a contract between A and B.?

Rule -

→ S. 2(h) defines a contract as an agreement enforceable by law. S. 2(e) defines an agreement as every promise and every set of promises forming consideration for each set.

→ There are two stages which precede the stage of promise. One is proposal, known as offer defined u/s 2(a) and another is accepted proposal, i.e. promise u/s 2(b).

→ To successfully become an agreement, there must be offer and acceptance. Only then it becomes a contract.

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Analysis

→ In the present case, the letter by A has not reached B and nor the letter of B has reached A. It is a case of offers at the same time, i.e. cross offers.

→ This term is not defined in ICA. In the case of Tin v. Hoffman (1873), it was held that there was no contract between both the parties since there were only simultaneous offers. There were no communication or acceptance. Cross offers do not fulfill the pre-requisites of a valid contract.

→ In the present case also, there is no acceptance between A and B.

Conclusion – There is no contract between A and B.

(b) The present statement refers to specific provisions of ICA – s. 25 (1) and s. 2(e) of ICA.

Introduction:- Basic concept Introduction of Promise without consideration is a gift.

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A promise without consideration is gift —

→ S. 25 (1) provides the exception to the general rule of Nudum Pactum which envisages the voidness of an agreement without consideration. If an agreement is expressed in writing, registered under the law for the time being in force for registration, that is Registration Act, 1949 and is made on account of natural love and affection between parties who stand in near relations.

→ S. 122 of the Transfer of Property Act, 1882 defines a gift as the transfer of an existing moveable or immoveable property made voluntarily and without consideration.

A promise made for consideration is agreement —

→ S. 2(e) states that every promise and set of promises forming consideration for each other, are to be termed as

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Illustration 99.

as agreements.

Conclusion

→ The provision of gift is acknowledge the natural relations and merely eliminates the element of consideration. It can not follow the nuances of a contract.

4

(a) Introduction

→ Intention to create legal relations is considered to be a pivotal part of formation of contract because it shows the willingness of a party to create legal relations and be bound by the legal consequences in the event of any breach of any contract.

→ This term is specifically not defined anywhere in ICA. But the need for the

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same can be traced in s. 2(h) which defines a contract as an agreement enforceable by law.

Explanation

Following are some common reasons which signify the need for an intention to create legal relations —

(i) Ensures enforceability of contract — The corresponding legal remedies under ICA, Specific Relief Act, Civil Procedure Code could not be sought if these are legal obligations per se.

(ii) Ensures economic viability — This feature ensures that the parties will be able to sue each other in the event of any breach and it would never take a toll upon their commercial relationships.

(iii) Case Laws

→ The leading case law on this point is Balfour v. Balfour which provided that

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in the absence of any consideration, it shall be deemed that there was no intention to create legally binding agreement.

In the present case, the husband brought wife to England from Sri Lanka. The husband had to return but wife stayed for medical reasons. He promised to pay an amount until she returns back. Since, he failed to pay, the wife sued.

→ Even under English law, the contract must have been made with a view to enter into legally binding relations. (Rose and Frank case)

→ Effects and Conclusion

→ In the event of absence of legal relations, the contract will merely remain to be a promise u/s 2(b) and won't be enforceable.

→ Thus, for the purpose of making a contract, intention to create legal relations must be present.

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(b) Introduction

→ The referred statement refers to the fact of protection of minors from the technical procedures of implying liabilities under ICA by making the contract with a minor void, which was held in the case of Mohiri Bibee v. Dharmodas Ghose.

→ S.11, ICA enlists the elements of contract and it does qualify a minor as competent to contract.

- Explanation

→ This protection can only be used for the purpose of protection but not to extinguish others' party rights.

→ There are some specific provisions which elucidate the same —

(i) In the event of any quasi-contract made by applying s.68 that is for necessities for life, the estate of the

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minor can be recovered for the purpose of recovery.

(ii) If a minor misrepresents him as a major and, even then the principal cannot claim his minority and shall be liable on behalf of the acts of that minor agent. [S. 184, ICA]

(iii) Some other specific provisions —

→ Juvenile Justice Act, 2015 and the Indian Penal Code, 1860 specifically put the age group of 16-18 years and 7-12 years respectively to be dol capax, unless the prosecution proves otherwise.

→ Case laws

→ In the case of Leslie v. Sheill, there was a minor who was misrepresenting his age obtained loan from the B who sued to recover on the ground. Minor was held liable for fraud. He was held to be liable in equity to restore the money.

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Mains Evaluation By Edzorb Law

N Nishtha Singh

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Garvit Dave

★★★★★ 25/08/2021

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Part - B

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10 (a) Introduction

According to Winfield, "Negligence as a tort is the breach of the legal duty to take care which leads to damage, undesired by the ~~plaintiff~~ defendant, to the plaintiff".

Nature of negligence

→ According to Pollock, a negligence is a type of conduct which a reasonable man can choose to avoid if he exercises a certain degree of reasonable care and caution.

→ It is not merely a state of mind. For eg, a doctor can not fail to exercise certain precautions to be taken before a surgery and defend himself later by saying that he had acted to the best of his capabilities.

→ His abilities are ought to match the abilities of a medical practitioner.

Bullet points

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→ For eg, ~~in s.~~ u/s 92 of the Indian Penal code, 1860 (IPC), ~~he~~ a doctor will not be liable if operates the patient where it was impossible to seek his consent. But at the same time, if he fails to seek consent from the guardian of the patient who was waiting outside the theatre, then he shall be liable.

Answer digest

→ Thus, negligence is labelled as a separate and independent tort where the person may or may not possess the state of mind or deliberate acts, but he fails to exercise reasonable care and caution.

18/25

Essentials of negligence

→ Duty of care – Every persons owes, a duty of care, to another person, while performing an act. For eg – The Road Traffic Regulations provided by the Transport Department of the Jharkhand Government

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provide that while driving backwards, a person must not cause danger to the drivers behind his vehicle.

→ Duty towards the plaintiff — The relationship between the plaintiff and defendant must be ensured. For eg — The Consumer Protection (E-Commerce) Rules 2020 create an obligation upon the ~~recent~~ entities to separately display the best before and expiry dates of products so as to enable the consumers to make a healty decision.

→ Breach of duty to take care — The defendant fails to fulfill the duty by failing to exercise reasonable care and caution. For eg, in the case of Municipal Corporation of Delhi v. Subhagvati (1966), a very old clock tower situated right in the middle of a crowded area of Chandni Chowk suddenly collapsed thereby causing the death of many people. The clock tower was 80 years old, though the normal span is 40-45 years.

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Since, the clock tower was under the control of Municipal Corporation of Delhi, they had a duty of care to get it repaired. By ignoring to repair the clock tower, they had breached their duty of care and were thereby liable.

→ Contributory negligence is itself a defence available to the defendant. It is not the same as negligence.

→ If the plaintiff himself takes the risk, he is not entitled to seek remedy for the injury caused, as envisaged by the maxim "Volenti Non Fit Injuria"

→ For eg, in cases of click wrap agreements, the plaintiff is expected to click "I agree" only after reading the total terms and conditions.

8. (a) Defamation means an injury to the reputation of a person resulting from

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a statement which is false. A man's reputation is treated as his property that his bundle of rights over the reputation and character. Defina

It is defined u/s 499, IPC and inflicts penal penalties u/s 500, IPC for a term of 2 years or fine or with both.

Essential conditions

Defamatory statement - The statement must tend to lower the reputation of the plaintiff. The test to ascertain is to see as to whether a particular statement is defamatory or not will depend upon how the right minding members of the society are likely to view it.

For eg - A publishes an advertisment in a local newspaper stating false information that the company of B has committed fraud of Rs 20,000. Since, newspaper is a public document u/s 74, ~~IPC~~ Indian Evidence Act

Differences to be elaborated in tabular format

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Act, 1872, many readers will read and it shall degrade the reputation of B.

10/25

→ Reference to plaintiff - There is no need of a direct reference. There should be reasonable conclusion that the personal identity of the ~~acc~~ plaintiff is referred.

For eg - If A, publishes a ~~is~~ article that all students of school B are very incompetent and thus should not be admitted in any coaching centre. Because of this, a student X suffers. Although his name is not directly referred, he can seek remedy.

Arnold Nazgaun

→ Publication of statement - Oral or written publication which makes the reputation of plaintiff less in the society to which he belongs is important.

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Forms of defamation —

→ Slander is the publication of a defamatory statement through words or gestures.

→ Libel is the presentation made through writing.

→ Under English law, libel is a crime while slander is not. The latter is only a civil wrong.

→ Unlike English law, Indian law does not treat both differently. Both are criminal offences u/s 499, IPC.

(b) Nuisance has been derived from the term "Nuire" which means to cause harm, or to hurt, or to annoy. According to Stephen, nuisance is anything done to the hurt or annoyance of the tenements of another, or of the lands, one which does not amount to trespass.

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Essential elements of nuisance

→ Wrongful act – Act should be done with the intention to cause the infringement of the legal rights of another is considered to be a wrongful acts.

→ Damage or loss or annoyance – For the purpose of seeking remedy, it must be proved.

→ Public and Private nuisance

→ Public nuisance is defined in s. 268, IPC. The elements are –

(i) Commission of an act or illegal omission which,

(ii) causes common injury, danger or annoyance to public;

(iii) or to people using the public right.

For eg – Obstruction of public into a public park by releasing cattle in

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the way.

→ Private nuisance is specifically not defined. But it means an act of nuisance with respect to one person or persons only. For eg - playing loud music at night only to disturb the one neighbour when all other neighbours are absent.

→ These two aspects differ in three elements —

(i) Mens rea - For the purpose of determination of an offence of public nuisance, mens rea is irrelevant since the provision nowhere mentions it. But, with respect to private nuisance, mens rea of the accused is important to determine the amount of damages.

(ii) Extent - The former covers the whole public as victim while the latter limits it to private spheres.

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Question 9.

(iii) Remedy – S. 290, IPC provides for a punishment of Rs 200 fine.

While, in the event of any act of private nuisance, the aggrieved can approach the civil court U/s 19 ~~of~~ CPC since it amounts to a civil wrong, for seeking damages.

Question 12.

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7] Ans) Res Ipsa Loquitor - It means "the term which speaks for itself". It is commonly quoted with reference to cases of accidents which state that if the negligence would have been avoided, accident would not have been caused.

→ This principle was devised in the case of Byrne v. Boadle.

→ There are few key elements —

(i) Inference of negligence - The accident should be such which could not have happend if normal course happened without any negligence. For eg - a clock tower can not randomly fall on someone's head in the market.

(ii) Role of defendant - The calculation of events must reflect the role of defendant to establish negligence which he could have avoided. For eg - ~~the doctor~~ a dentist can not leave a tool in a patient's mouth. He only

Under Section 12.

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person who has a control here, is the 'dentist'.

(iii) Freedom from contributory negligence — This principle can only apply if the plaintiff does not contribute to the act.

(b) Exceptions to Volenti Non Fit Injuria

This means that if the plaintiff has himself consented to the doing of an act, he can not claim a remedy later.

Exceptions

→ Free consent — This consent must have been freely given. If the plaintiff has been made to give consent by using fraud, coercion, misrepresentation or undue influence, this maxim shall not apply.

→ Consent to illegal acts — A person charged with a criminal offence, can not claim his exemption on the basis of consent of the victim. For eg — an accused

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can not claim exemption by defending that the victim above 18 years of age had consented to death. He shall be liable to culpable homicide not amounting to murder. [s. 300, Exception V, IPC]

(iii) Rescue cases – Although the plaintiff voluntarily takes the risk of save someone from danger caused by the wrongful act of the defendant, yet the plaintiff will succeed in his claim.

(c) Defence of qualified privilege

→ It is an immunity (protection) from the penalty of a law suit, usually a law suit for defamation.

→ The person making the states must show that he made the statement in good faith defined in s. 52 of IPC and s. 3(32) of General Clauses Act.

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→ Art 105 of the Constitution of India, 1950 provides for parliamentary privideges to sitting MPs and MLAs and protects them for making statements in the parliament during the course of a proceedings.

→ Art 361 says down that a no criminal proceedings shall be initiated against the President or Governor during his term of office.

→ S. 197, CrPC says down that in the event of an alleged offence against the public servant ~~State or State government~~, no court can take cognizance without previous sanction of the state or central government, as the case maybe.

(d) S. 2(n) of the Limitation Act defines tort as a civil wrong which is not a breach of contract or breach of trust. Crime is not strictly defined anywhere. But, Austin defines crime in terms of non-obeyance of rules which follow sanctions.

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→ Civil remedy u/s 19, CPC lies for ~~a~~ tortuous liability while the primary law for involving penal punishments is IPC.

→ The defendant pays compensation if found liable. The convict pays fine and suffers a substantive sentence.

→ In the former, the burden of proof lies upon the plaintiff to prove his case while in the latter, the prosecution to prove the case beyond reasonable doubt.

→ Tort is uncodified while crime is codified through IPC, CrPC and Indian Evidence Act.

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Remarks:-

1. Answer Format needs to be improved.
2. Cutting & over writing to be avoided.
3. Relevant & imp. case laws to be stated where Necessary.
4. Differences to be in Tabular Format.
5. Illustration to be included where needed makes it more presentable.

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