

Q 1. Explain are essentials of an agreement is every agreement a contract? Discuss in brief.

Ans 1. A contract means an agreement which is enforceable by law. An agreement consists of reciprocal promises between the two parties. In case of contract each party is legally bound by the promise made by him. A contract or an obligation to perform a promise may arise in the following way

- I. By Agreement and Contract;
- II. By Standard Form Contract; and
- III. By Promissory Estoppel.

I. Agreement and Contract. The most common way of making a contract is through an agreement. The two parties may agree to something through mutual negotiations. When one party makes an offer and the other accepts the same, there arises an agreement, which may be enforceable by law.

II. Standard Form Contracts. In the modern age some persons, institutions or establishments such as the Railways, Insurance Companies, Banks, manufacturers of various goods, etc. may have to enter into a very large number of contracts with thousands of persons. They cannot possibly negotiate individually with the persons with whom the contracts are to be made. Contracts with pre-drafted matters are generally prepared by one party, which the other has to agree to. As a general rule, such Standard Form Contracts are as much valid as those entered into through due negotiations. Different situations and problems arising in such contracts have been discussed here under.

1. AGREEMENT AND CONTRACT

Contract

According to Section 2(h) of the Indian Contract Act, 1872, "An agreement enforceable by law is a contract." All agreements are not enforceable by law and, therefore, all agreements are not contracts. Some agreements may be enforceable by law and others not. For example, an agreement to sell a radio set may be a contract, but an agreement to go to see a movie may be a mere agreement not enforceable by law. Thus, all agreements are not contracts. Only those agreements which satisfy the essentials mentioned in Section 10

of the Indian Contract Act, 1872, become contracts. However, all contracts are agreements.

Agreement

According to Section 2(e) : "Every promise and every set of promises forming the consideration for each other is an agreement."

In an agreement there is a promise from both sides. For example, A promises to deliver his watch to B and in return B promises to pay a sum of Rs. 2,000 to A. There is said to be an agreement between A and B.

A promise is a result of an offer? (proposal) by one person and its acceptance by the other. For example, when A makes a proposal to sell his watch to B for Rs. 2,000 and B accepts his proposal, there results a promise between two persons. Section 2(b) of the Act, 1872, defines "promise" as under

"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A

proposal, when accepted, becomes a promise."

Thus, when there is a proposal from one side and the acceptance of that proposal by the other side, it results in a promise. This promise from the two parties to one another is known as an agreement.)

(It has been noted above that an agreement enforceable by law is a contract. All such agreements which satisfy the conditions mentioned in Section 10 of the Act, 1872, are contracts. Section 10 is as under :

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

The essentials needed for a valid contract, therefore, are as under

1. An agreement between the two parties. An agreement is the result of a proposal or an offer by one party followed by its acceptance by the other.
2. Agreement should be between the parties who are competent to contract?
3. There should be a lawful consideration and lawful object in respect of that agreement.
4. There should be free consent of the parties, when they enter

into the agreement.

5. The agreement must not be one, which has been expressly declared to be void.

From the point of view of the legality, there are different types of agreements.

1. Contract

- According to Section 2(h), of the Act, 1872, contract is an agreement which is enforceable by law. It is an agreement or set of promises giving rise to obligations which can be enforced or are recognised by law. It has been noted above that in order that an agreement becomes a contract, it has to satisfy all the essentials of a valid contract as mentioned in Section 10.1

2. Void Agreements

According to Section 2(g), of the Act, 1872, an agreement not enforceable by law is said to be void. For instance, an agreement by a minor has been held to be void. Sections 24 to 30 of the Indian Contract Act, 1872, make a specific mention of agreements which are

void. Those agreements include an agreement without consideration, an agreement in restraint of marriage, and an agreement in restraint of trade.

3. Voidable contracts

According to Section 2(i), of the Act, 1872, an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other, is a voidable contract. Thus, a voidable contract is one which could be avoided by one of the parties to the contract at his option. If such a party does not avoid the contract, the contract remains valid, but if it prefers to avoid the contract, then the contract becomes void. For instance, when the consent of a party to a contract has been obtained by coercion, undue influence, fraud or misrepresentation, the contract is voidable at the option of the party whose consent has been so obtained. Once an innocent party exercises the option and rescinds the contract, the contract becomes void.3

Void agreement and voidable contract distinguished

A void agreement is a nullity from its inception and no rights accrue to any party thereto or his transferee, etc. A voidable contract, on the other hand, is a contract which can be avoided by one of the parties thereto. Such a contract remains valid until it has been avoided but becomes void only if and when it is avoided. Until such a contract has been avoided, rights may accrue in favour of the parties to the contract or their transferees, etc.

4. Illegal agreements

There are certain agreements which are "illegal" in the sense that the law forbids the very act, the doing of which is contemplated by the agreement. For example, an agreement to commit a crime or a tort, or an agreement which tends to corrupt public life, or an agreement to defraud public revenue, is illegal. Such an agreement is patently opposed to public policy. The law forbids making of such agreements.

An illegal agreement may be distinguished from a mere "void" agreement which may not be opposed to public policy. For example, an agreement to do an impossible act is void, although there may be nothing in such an agreement which is opposed to public policy. The law does not forbid making of such agreements, although if the parties have made such an agreement, the same is not enforceable in a Court of Law. Whether an agreement can be termed as illegal or not may depend on the degree to which it is opposed to public policy. For example, an agreement in restraint of trade is void but we may not term it as an "illegal" agreement as we do when it is an agreement to commit a crime.

An illegal agreement is that agreement which is actually forbidden by law. It is a void agreement. To distinguish an illegal agreement from other void agreement, it is stated that while in case of a void agreement a collateral transaction may not also be void, but in case of an illegal agreement, the collateral transaction is also held void. For example, A gives money to B to enable him to pay his wagering debt. The wager is the main transaction which is void, but loan given by A is subsidiary to it, which is not void and A can recover his money from B. On the other hand, where A gives loan to B to smuggle goods. Smuggling is the main transaction and loan is subsidiary to it. But, loan transaction is also said to be tainted with the same illegality and A will not be able to recover his money.'

THE AGREEMENT (OFFER AND ACCEPTANCE)

It has been noted above that an agreement between the parties is one of the essentials for creating a contract. An agreement arises by an "offer" or proposal by one of the parties and the "acceptance" of such offer by the other. The rules regarding proposal and acceptance are being discussed below.

Q 2. In order to convert a propose into a promise the acceptance must be absolute and unqualified explain this statement and illustrate

ANS 2. PROPOSAL OR OFFER The term "proposal" has been defined in Section 2(a) of the Indian Contract Act, 1872 as follows

"When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

The term 'proposal' used in the Indian Contract Act is synonymous with the term 'offer' used in English law. The willingness to do or to abstain from doing something, i.e., the proposal or the offer may be made with a view to obtaining the assent of the other party thereto. For example, A's willingness to sell his radio set to B for Rs. 500 if B accepts to purchase the same, amounts to proposal by A for the sale of the radio set. But if a statement is made without any intention to obtain the assent of the other party thereto, that cannot be termed as proposal.

offer and Invitation to treat (offer) distinguished

A proposal, or an offer has to be distinguished from an invitation to offer or treat.

Sometimes a person may not offer to sell his goods, but make some statement or give some information with a view to inviting others to make offers on that basis. For example, a book seller sends catalogue of books indicating prices of various books to many persons. This catalogue is not an offer to sell those books at prices indicated against those books. This is an "invitation to treat". If any person is interested in purchasing the book or books mentioned in the catalogue, he may make an offer and the person circulating the catalogue has a discretion to accept or not to accept the offer.

Likewise, inviting persons to an auction, where goods to be auctioned are displayed, is not an offer for the sale of goods. The offer is made by the intending buyers in the form of bid. Such an offer (bid), when accepted by the fall of hammer or in some other customary way, will result in a contract.

In the same way, the advertisement calling for tenders is not a proposal or offer but merely an invitation to the contractors for making an offer. The 'submission of a tender' is in the nature of an offer. It will result in a contract only when the tender is accepted. Making of the highest bid will not automatically result in a contract. The contract will arise only when the highest

bid is accepted by the competent authority and the said acceptance is communicated to the tenderer.

Nobody is bound to accept an offer. An auctioneer, therefore, may not accept even the highest bid (offer).³ An advertisement by the auctioneer to sell goods by an auction being an invitation to treat rather than an offer, he does not incur any liability by not accepting the offer which is in the form of a bid. An auctioneer is even free to cancel an auction sale announced by him. In *Harris v. Nickerson*,⁴ the defendant advertised a sale by auction. The plaintiff travelled to the advertised place of auction to find that the defendant had cancelled the auction sale. He brought an action against the defendant to recover the expenses of his travel. It was held that he was not entitled to the same as there was as yet no contract between the two parties, which could make the defendant liable.

Display of goods either in a show-window or inside the shop and such goods bear price-tags, would not amount to an offer to sell goods at prices mentioned on the price tags. It would be mere invitation to treat. In *Pharmaceutical Society of Great Britain v. Boots Cash Chemists Ltd.*, it was held that if an intending buyer was willing to purchase the goods at a price mentioned on the tag, he could make an offer to buy the goods. The shopkeeper had the option to accept the offer or reject the same. The contract would arise only when the offer was accepted. No customer can force the shopkeeper to sell the goods at the price mentioned on the tag. In the instant case, the defendants were having the business of retail sale of drugs. Medicines were displayed on the shelves and their retail prices were also indicated. They had "self-service" system. On entry into the shop a customer was given a wire basket. After selecting the articles needed by a customer he could put them in the basket and take them to the cash desk. The defendants had put a registered pharmacist near the cash counter, who had been authorised to stop any customer removing any drug from the premises.

It was held that the display of articles, even on a "self-service" basis was not an offer but was merely an invitation to treat. When the customer selected an article and brought the same to the cash desk that amounted to an offer to buy the goods. The defendants were, therefore, free to accept the offer or not. The following observations of Lord Goddard, C.J. are worth noting :

. "I think that it is a well-established principle that the mere

exposure of goods for sale by a shopkeeper indicates to the public that he is willing to treat but does not amount to an offer to sell. I do not think I ought to hold that principle is completely reversed merely because there is self-service scheme, such as this, in operation. In my opinion, it comes to no more than

that the customer is informed that he may himself pick up an article and bring it to the shopkeeper with a view to buying it, and if, but if, the shopkeeper then expresses his willingness to sell, the contract for sale is completed. In fact, the offer is an offer to buy, and there is no offer to sell; the customer brings the goods to the shopkeeper to see whether he will sell or not. In 99 cases out of a 100 he will sell and, if so, he accepts the customer's offer, but he need not do so. The very fact that the supervising pharmacist is at the place where the money has to be paid is an indication to the purchaser that the shopkeeper may not be willing to complete a contract with anybody who may bring the goods to him."

Harvey v. Facey is an example where the quotation of the price was held not to be an offer.

The defendants in this case, were the owners of a plot of land known as Bumper Hall Pen. The plaintiffs being interested in purchasing the same sent a telegram to the defendants, "Will you sell us Bumper Hall Pen? Telegraph lowest cash price." The defendants in reply telegraphed

"Lowest price for Bumper Hall Pen, £ 900."

The plaintiffs sent another telegram to the defendants saying, "We agree to buy Bumper Hall Pen for £ 900 asked by you. Please send us your title-deeds."

The defendants refused to sell the land. In a suit, the plaintiffs contended that the second telegram from the defendants quoting lowest price was an offer and the same had been accepted by the plaintiffs, and the contract was complete. The defendants, on the other hand, contended that quoting the price was not an offer which could be accepted. The Judicial Committee of the Privy Council held that exchange of the above stated telegrams had not resulted in a contract. It was observed that the first telegram had asked two questions, one regarding willingness to sell, and the other regarding the lowest price. In reply only lowest price was quoted, and this quoting of the price was not an offer. The third telegram from the plaintiffs saying, "we agree to buy" was only an offer and not the acceptance of an offer. Since this offer had not been accepted, there was no binding contract between the parties.

In *Badri Prasad v. State of Madhya Pradesh*, the Divisional Forest Officer wrote to the plaintiff : "Kindly inform whether you are ready to pay further Rs. 17,000 for the contract of big trees.....which (contract) is under dispute at present. The contract can be given to you on this compromise only.....On receipt of your reply the State Government will be informed."

In reply to the above letter the plaintiff wrote back :

"I am ready to pay Rs. 17,000 provided my claim to have the refund of Rs. 17,000 already paid, from the owner of the Village or any other relief consequential to the judgment of that case remains unaffected..... Subject to those conditions I

shall pay Rs. 17,000 as required in your referred letter." The Supreme Court held that by those letters no contract had

ACCEPTANCE

A proposal, when accepted, results in an agreement. It is only after the acceptance of the proposal that a contract between the two parties can arise.

According to Section 2(b) : "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise."

The person making the proposal does not become bound thereby until its acceptance. As soon as his proposal is accepted that is known as promise, whereby both the parties become bound.

When the proposal or acceptance is made in words, the promise is said to be express. When the proposal or acceptance is made otherwise than in words, the promise is said to be implied.

The offeree is not bound to accept the offer. He is free to reject it or make it to lapse by non-acceptance. Thus, it is perfectly lawful for a company not to accept the highest bid (tender) and to re-auction the goods.

Similarly, a person inviting tenders may not accept a bid, if an essential condition of tender is not complied with : A person inviting tenders may reserve a power to reject all the tenders. The person submitting the highest tender cannot have a right to have his tender accepted.

In Patna Regional Dev. Authority v. Rashtriya Pariyojna Nirman Nigam, the tender submitted by the first respondent, who had been black listed for 5 years, was rejected on the ground that

The stood black listed at the time the tender was to be accepted. It was held that the rejection of the tender was justified and valid. The tenderer had not challenged his black listing when the tender committee decided about this tender. Rejection of the tender by the tender committee could not be considered to be arbitrary or unreasonable.

Effect of Acceptance

A contract is created only after an offer is accepted. Before the acceptance is made neither party is bound thereby. At that stage the offeror is free to revoke or withdraw his offer, and the offeree is free not to accept the offer or to reject the same. After the offer has been accepted, it becomes a promise which, if other conditions of a valid contract are satisfied, binds both the parties to the promise. After acceptance, each party becomes legally bound by the promise made by him through the medium of offer and acceptance of it.

The effect of acceptance of an offer has been explained by Anson¹ in the following words :

Acceptance is to an offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled or undone. But the powder may have lain until it has become damp, or the man who laid the train may remove it before the match is applied. So an offer may lapse for want of acceptance or be revoked before acceptance. Also the offeree may decide to reject the offer. Until an offer is accepted, it creates no legal rights, and it may be terminated at any time.

Just as when the lighted match comes in contact with gunpowder, there would be an explosion and then it will not be possible to bring the things back to the original position, similarly, after the offer is accepted, it creates a contract whereby both the parties become bound and none of them can go back. What happens after explosion or after acceptance cannot be undone. There is a possibility that in course of time the powder may have become damp or the train of gunpowder may have been removed, and in that event the damp powder or the one which has been removed, will not create any explosion. In the same way, the offer lapses if the same is not accepted within the prescribed time, or, if no time is prescribed, by remaining unaccepted until the expiry of the reasonable time, or else the offer could be revoked by notice of revocation by the offeree. Once the offer lapses or is revoked, it is incapable of being converted into a contract by being accepted. Thus, the acceptance of the offer, while the same is still alive, would result in a contract creating obligations for both the parties.,

In *Gajendra Singh v. Nagarpalika Nigam, Gwalior*, it has been held by the M.P. High Court, that if an authority calling tenders decided not to go ahead and accept a tender, the tenderers, or even the highest tenderer, could not force the authority to accept the tender and enter into a contract with him. No right accrues to a tenderer until his tender has been accepted. Similarly, a person inviting tenders may reserve a right to reject any tender or even the highest tender. In such a case a tenderer has no cause of action if his tender is not accepted.

Although acceptance of an offer results in a contract but a mere agreement to agree, or an agreement to enter into a contract itself does not result in a contract.

Essentials of a valid acceptance

In order that acceptance of an offer can result in a contract, the acceptance must satisfy the following requirements :

1. Acceptance should be communicated by the offeree to the offeror.
2. Acceptance should be absolute and unqualified.
3. Acceptance should be made in some usual and reasonable manner, unless the proposal prescribes the manner of acceptance.
4. Acceptance should be made while the offer is still subsisting

Acceptance should be absolute and unqualified

For a valid acceptance it is also essential that the acceptance should be absolute and unqualified. When the letter of acceptance contemplates future negotiations for finalization of the terms of contract, there arises no contract. It may be noted that the conditional or qualified acceptance is not the proper acceptance for the creation of a valid contract. If I offer to sell my radio to you for Rs. 500 and you convey that you are willing to pay only Rs. 400 for the same, there is no contract in this case. Your willingness to pay Rs. 400 is not acceptance of my offer, it is counter offer by you. By your counter offer you are willing to purchase the radio for Rs. 400 instead of Rs. 500. A contract can arise if I unconditionally accept your offer (counter offer). By conditional acceptance or the counter offer, the original offer is deemed to be rejected. Once the original offer is destroyed by counter offer, it is a dead offer and cannot be accepted

unless renewed. Thus, if in the above illustration, after making a counter offer of Rs. 400, you have a second thought and now you want to purchase my radio for Rs. 500 and you write about the same to me, this cannot be considered to be acceptance at all because my original offer has already lapsed. This in fact is now another offer from your side to purchase my radio for Rs. 500, which can result in a contract if I prefer to accept your offer.

The point may be illustrated by referring to the case of *Hyde v. Wrench*, There an offer was made by A to B for the sale of a farm for 1,000 pounds. B rejected this offer and said that he will pay only £ 950 to which A did not agree. Thereupon B said that he was willing to pay 1,000 pounds to which also A did not agree. B sued A and contended that there was a contract by

which A was bound. It was held that B had once rejected A's offer by his counter offer to pay 950 pounds and this made the original offer to lapse, and therefore, no contract had resulted in this case.

In D.S. Construction Ltd. v. Rites Ltd.,³ the defendant issued a letter inviting tender to the plaintiff for construction of Thermal Power Station. In case, the defendant wanted to have the validity of the tender extended beyond the original period of six months, it was up to him to request the tenderer therefor. The request made by the defendant for extension, was met by a counter offer by the plaintiff. The defendant rejected the counter offer made by the plaintiff as a condition precedent, but contended the concluded contract had been struck. Rejecting his contention, the Delhi High Court held that the offer or proposal had to be accepted in its entirety with the condition or not at all. If the offer was not accepted in its entirety, it would be a deemed refusal on the part of the plaintiff and therefore the defendant was held not entitled to forfeit the earnest money.

A composite offer, the Court said could not be accepted in part unless the party agreed to that course. It was not open to the defendant, the Court ruled, to accept only part of plaintiff's counter proposal and unilaterally style it as an "unconditional" acceptance. The only course open was to reject the plaintiff's conditional counter proposal in its entirety.

with material alterations in the offer. There was no further communication thereafter from A to B. The question arose as to whether silence by A amounted to acceptance of the counter offer by conduct. It was held by the Supreme Court that when there was a counter offer it meant that there was no consensus ad idem as to material terms of the contract. No concluded contract had, therefore, come into existence between A and B.

An enquiry as to the terms of the offer does not necessarily mean a counter offer.

In Stevenson, Jaques & Co. v. Mclean, the offeror made an offer to sell iron at 40 sh. net cash per ton. After receiving the offer the offeree sent a telegram to the offeror to know about the terms of delivery and payment. It was held that this enquiry did not mean the rejection of the original offer or a counter offer, and, therefore, the offeree could still accept the offer. It was observed that in this case it was "a mere enquiry, which should have been answered and not treated as a rejection of the offer."

Q 3. Minors are incapable of entering into a valid contract explain this statement with the help of leading cases

ANS 3. One of the essentials of a valid contract, mentioned in Section 10, of the Indian Contract Act, 1972, is that the parties to the contract should be competent to make the contract. According to Section 11 :

"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."

It means that the following three categories of persons are not competent to contract :

1. A person who has not attained the age of majority, i.e., one who is a minor. 2. A person who is of unsound mind. 3. A person who has been disqualified from contracting by

some law. Although the above stated categories of persons are not competent to contract, yet they may sometimes be making some bargains, taking some loans, or be supplied with some goods by third parties, or be conferred with some benefits, etc. The position of such persons in such like situations is being discussed below :

THE POSITION OF A MINOR Who is a minor

A person who has not attained the age of majority is a minor.

Section 3 of the Indian Majority Act, 1875 provides about the age of majority. It states that a person is deemed to have attained the age of majority when he completes the age of 18 years, except in case of a person of whose person or property a guardian has been appointed by the Court, in which case the age of majority is 21 years, In such a case the majority does not arise till the completion of 21 years of age by the ward, and it is immaterial, whether the guardian dies or is removed, or otherwise ceases to act. In England, the age of majority is 18 years.

It may be noted that the Indian Majority Act is being amended so as to make the age of majority as 18 years for every person, irrespective of the fact that in respect of them any guardian has been appointed. The Bill has been passed by both the Houses of Parliament but the President's assent has yet to be obtained.

Nature of a minor's agreement

As noted above a minor is not competent to contract. One question which arises in case of an agreement by a minor is, whether the agreement is void or voidable? The Indian Contract Act, 1872, does not have any provision to answer this question. In the absence of any statutory provision, there had been controversy among High Courts on this point. The controversy was set at rest by the decision of the Privy Council in *Mohori Bibee v. Dharmodas Ghose*,⁴ in 1903. It was held that the agreement by a minor was void.

The facts of *Mohori Bibee's* case are as under : The plaintiff, Dharmodas Ghose, while he was a minor, mortgaged his property in favour of the defendant, Brahmoo Dutt, who was a money-lender to secure a loan. At the time of the transaction the attorney, who acted on behalf of the money-lender, had the knowledge that the plaintiff was a minor.

The minor brought an action against the money-lender stating that he was a minor when the mortgage was executed by him and, therefore, the mortgage was void and inoperative and the same should be cancelled. By the time of Appeal to the Privy Council the defendant, Brahmoo Dutt died and the Appeal was prosecuted by his executors.

The defendant (money-lender), amongst other points, contended that :

(i) the minor had fraudulently misrepresented his age, the

law of estoppel should be applied against him. In other words, he should not be allowed to plead that at the time of the transaction he was a minor and, therefore, no relief

should be given to the minor in the case; and

(ii) if the mortgage is cancelled as requested by the minor, the minor should also be asked to refund the loan of Rs.

10,500 which he had taken. The defendant's contentions were rejected. Minor's agreement was held void, and it was held that the minor could not be asked to repay the loan taken by him. On the above stated points raised by the defendants, the matter was decided as under :

1. The defendant's (money-lender's) contention that the minor had falsely misstated his age, the law of estoppel should apply against him and he should

not be allowed to contend that he was a minor, was considered. The Privy Council rejected this contention, and the minor was allowed to plead that he was a minor at the time of the agreement and the agreement was void. It was found that the fact that the plaintiff was a minor at the time of making of the agreement was known to the defendant's agent. It was held that the law of estoppel as stated in Section 115, Indian Evidence Act, was not applicable to the present case, because in this case the statement (about age) was made to a person who knew the real facts and was not misled by the untrue statement. It was observed :1

"There can be no estoppel where the truth of the matter is known to both the parties, and their Lordships hold, that a false representation, made to a person who knows it to be false, is not such a fraud as to take away the privilege of infancy."

2. Another contention of the defendant (money-lender) was that, if the plaintiff's (minor's) claim to order the cancellation of the mortgage is allowed, the minor should be asked to refund the loan taken by him, under Sections 64 and 65, Indian Contract Act.

Section 64 of the Indian Contract Act reads as under :

"When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained of which he is a promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received."

Their Lordships observed that Section 64 was applicable to the case of a voidable contract. Minor's agreement being void, Section 64 was not applicable to the case and therefore the minor could not be asked to pay the amount under this Section.

Application of Section 65, Indian Contract Act, to the present case was also considered. Section 65 is as follows :

"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." As regards the application of this Section to the present case, it was observed that this Section, like Section 64, is applicable to an agreement or contract between competent parties, and has no application to a case in which there never was,

and never could have been, any contract. The minor, therefore, could not be asked to repay the amount even under Section 65.

The Law Commission of India? disagreed with the interpretation given by the Privy Council to Section 65. In their view Section 65 covers the case of a minor, who makes false representation that he is a major and such a minor should be asked to pay compensation. They recommended that an Explanation be added to Section 65 to give effect to their opinion. Their opinion is as under :

"We feel that the Judicial Committee had not correctly interpreted Section 65 and we are of the opinion that an agreement is 'void' or 'is discovered to be void' even though the invalidity arises by reason of the incompetency of a party to a contract. We recommend that an Explanation be added to Section 65 to indicate that that Section should be applicable where a minor enters into an agreement on the false representation that he is a major."

No amendment of the Indian Contract Act has been made so far to give effect to the recommendation of the Law Commission.

- 3. The money-lender claimed the refund of the mortgage money under another provision also, i.e., Section 41, Specific Relief Act, 1877. The Section reads as follows :

"On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require."

As regards this Section, it was held that this Section gives discretion to the Court to order compensation, but under the circumstances of this case, justice did not require the return of the money advanced to the minor, as the money had been advanced with the full knowledge of the infancy of the plaintiff. The claim for refund under the Specific Relief Act was, therefore, disallowed.

Position under English Law

According to the general rule at Common Law, the contract made by an infant was voidable at his option. The rule was modified by the Infants Relief Act, 1874, which declares the following three types of contracts as absolutely void :

1. Contracts for the repayment of money lent or to be lent.
2. Contracts for the supply of goods (other than necessaries.)
3. Contracts for accounts stated.

Ratification of the minor's agreement

A minor's agreement being void ab initio, it is incapable of being validated by a subsequent ratification after the minor has attained the age of majority. The consideration furnished in respect of a transaction during minority cannot be considered to be a valid consideration for a subsequent promise after attaining majority and thus no ratification is possible of a promise made by a person during his minority. A contract by a minor is void. A void contract which is a dead letter cannot be revived and cannot constitute a valid consideration for a subsequent contract, and, therefore, a transaction entered into by a minor during minority, cannot be ratified. Every contract needs a separate consideration, and consideration which passed under the earlier contract cannot be imported into the contract which the minor entered on attainment of majority.

In *Suraj Narain v. Sukhu Aheer*,⁴ a person borrowed some money during his minority and then made a fresh promise, after attaining majority, to pay that sum plus interest thereon. The question before the Allahabad High Court was, whether consideration received by a person during his minority can be good consideration for a fresh promise by him after attaining majority. It was held by a majority of 2 : 1, that the consideration received by a person during his minority could not be called consideration in its strict term within the meaning of Section 2(d), and there was no question of that consideration being considered valid for a fresh promise. The promisor, therefore, could not be made liable in respect of such a promise.

If a person has received a part of the benefit during the minority and a part after attaining majority, a promise by him to pay for the both, if made after attaining majority, is with valid consideration and enforceable. In *Kundan Bibi v. Sree Narayan, s*, while he was a minor, received some goods from K in connection with his business of piece-goods and he was thus indebted to K to the extent of Rs. 7,373/4/. On attaining majority S took a further sum of Rs. 76/12/- and at that time executed a bond for paying the total amount of Rs. 7,450 to K. In an action by K to recover this amount it was contended by S that he was not liable on the bond because the same purported to ratify debts incurred during minority. It was, however, held that S was liable for the whole debt secured by the bond, because there was a new consideration for the promise on which the defendant is sued.

Though a contract by a minor is void, it is quite competent for such a person to carry on the transaction started during minority, even after attaining majority in such a way as to bind himself for the whole transaction. In *Nihalchand v. Mir Jan Mahomed Khan*,² a contract of lease had been entered into on behalf of the plaintiff, while he was a minor. After attaining majority, the plaintiff

continued with the transaction of lease. It was held that the plaintiff was entitled to enforce the lease and recover the arrears of rent.

Ratification of acts done on minor's behalf

A minor's agreement being void ab initio, neither he can himself enter into contract nor authorize an agent to do so on his behalf.³ Since after the ratification of an act done on behalf of a person, the act gets the validity of a previously authorized act, it is necessary that the act to be ratified must be such as could have been legally authorized. In *Irvine v. Union Bank of Australia*, the Privy Council observed :

"A ratification in law is treated as equivalent to a previous authority, and it follows that, as a general rule, a person or body of persons, not competent to authorize an act, cannot give it validity by ratifying it."

As a minor is incapable of either making a contract himself, or authorizing the same, he cannot legally ratify an act done on his behalf. A minor cannot ratify acts done on his behalf because the whole question of ratification is based on the assumption that authority could have been conferred by the person ratifying the acts at the date when the acts were performed.

No Estoppel against a minor

When a minor misrepresents at the time of contract that he has attained the age of majority, the question which arises in such a case is, does the law of estoppel apply against him, so as to prevent him from alleging that he was a minor when the contract was made? In other words, can he be made liable on the agreement on the ground that since earlier he had asserted that he had attained majority, he should now be allowed to deny the same? Section 115, Indian Evidence Act, which lays down the law of estoppel is as under :

"Where one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representatives shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing."

According to the rule contained in Section 115, Indian Evidence Act, if you make a statement today which misleads another person, you are not allowed to deny the statement tomorrow when the question of your liability arises.

The question of estoppel came before the Courts in a number of cases. In *Mohori Bibee V. Dharmodas Ghose*,² the minor misrepresented his age while

taking loan, but the fact that the person taking the loan is a minor was known to the money-lender. The Privy Council did not consider it necessary to decide whether Section 115, Indian Evidence Act, was applicable to the present case, because the money-lender was not misled by the false statement by the minor as he was aware of the age of the borrower.

From the various decisions of the different High Courts, we find that the consensus is that the law of estoppel does not apply against a minor. He is allowed to plead minority as a defence to

avoid liability under an agreement even though at the time of making the agreement, he falsely stated that he has attained the age of majority.

In Vaikuntarama Pillai v. Authimoolam Chettiar, the Madras High Court has held that as there is a clear statutory provision that a minor being incompetent to contract is incapable of incurring any liability for any debt, the law of estoppel cannot overrule this provision to make him liable. The Bombay High Court in Gadigeppa v. Balangowda⁴ has followed the above stated decision of the Madras High Court as is clear from the following observation :

I agree with the view of the Madras High Court in Vaikuntarama Pillai v. Authimoolam Chettiar, and think that there can be no estoppel against an Act of Parliament or against an Act of the legislature, and the principle of estoppel cannot be invoked to defeat the plain provisions of the statute.

The Patna High Court also has held that the rule of estoppel which is a rule of evidence, is subject to the provisions of the Indian Contract Act, which makes an agreement by a minor void.⁴

In Khan Gul v. Lakha Singh, the Lahore High Court also held that the law of estoppel does not apply against a minor. The reason advanced by Sir Shadi Lal, C.J. is, however, different. According to him, the law of estoppel, which is a rule of evidence, is a general law and this has to be read subject to the special law contained in the Indian Contract Act, according to which the agreement by a minor is void.

In Lakhwinder Singh V. Paramjit Kaur, the plaintiff respondent, a daughter of one Avtar Singh, now deceased, inherited a part of his property constituting land. While minor, she executed general power of attorney in favour of her mother Smt. Rattan Kaur, who executed a sale deed of land belonging to her daughter in favour of defendant-appellant.

Finding that the plaintiff respondent was a minor at the time of execution of power of attorney nor her mother obtained specific

permission from the District Court, sale of land share by the mother was held void. The Punjab & Haryana High Court, relying on Supreme Court decision in Kartar Singh v. Harbans Singh, held that the contention that the transferee was a bona fide purchaser would not be available since he did not make all reasonable and diligent enquiries regarding the capacity of the transferor and the necessity to alienate the estate of the minor.

Return of benefit secured by a fraudulent minor

English Law : The Doctrine of Restitution

According to English law, if a minor has obtained undue benefit in any transaction, he is required to restore back the benefit so received by him, under the equitable doctrine of restitution. Under the doctrine he is asked to restore back the exact things taken by him. It is applicable only to goods or property received by a minor so long as they can be traced, and are still in his possession. Since it is difficult to identify money and to prove whether it is the same money or different one, the doctrine does not apply to money. Even as regards goods or property, if the same have been consumed or transferred and are no more traceable, the doctrine of restitution does not apply there.

The case of Leslie v. Sheill² explains the doctrine. In this case, the defendant, a minor, falsely misrepresented himself to be a major, and obtained two loans of £ 200 each from the plaintiffs, who were money-lenders. The plaintiffs brought an action to recover £ 475, being the amount of loan taken and interest thereon. It was held by the Court of Appeal that the money could not be recovered. If that were allowed, that would amount to enforcing the agreement to repay loan, which is void under the Infants' Relief Act, 1874.

It was explained that the object of the doctrine of restitution is to restore back the ill gotten gains taken by the minor, rather than enforcing the contract. If a minor is asked to pay money which cannot be traced and which he no more possesses, it would amount to enforcing the agreement. Where the question of repayment is there, the doctrine of restitution does not help, or as stated by Lord Sumner, "Restitution stops where repayment begins."

Indian Law : Compensation by a minor

It has been noted above that in England restitution, that is, the restoring back the property by a fraudulent minor is permitted, if the property can be traced. According to Leslie v. Sheill, the money obtained by a minor cannot be recovered from the minor as the same cannot be traced. If a minor is asked to pay back the money, it may mean enforcing contractual obligation against a minor, which the law does not permit. I

1. Compensation under Sections 64, 65 and 70, Indian Contract Act

The question, whether a minor can be asked to pay compensation to the other party, under Sections 64 and 65, Indian Contract Act had arisen in Mohori Bibee v. Dharmodas Ghose. While discussing this case, it has already been noted that in this case the Privy Council had held that the question of compensation under, Sections 64 and 65, Indian Contract Act, arises where the parties are competent to contract, and these provisions do not apply to the case of a minor's agreement. The matter came for consideration before the Law Commission of India. The Law Commission disagreed with this interpretation put to Section 65 by the Privy Council. In its view compensation under Section 65 be allowed even if the invalidity of the agreement is because of the fact that a party is incompetent to contract. It has recommended that an Explanation be added to Section 65 to indicate that the Section is applicable where a minor enters into an agreement on the false representation that he is a major. In spite of the above stated recommendation by the Law Commission, no amendment has been made in the Act so far. .

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