

Q 1. Under what circumstances a contract becomes voidable? Discuss with the help of suitable illustration and statutory provisions

ANS 1. According to Section 15, "Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, 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."

Coercion is said to be there where the consent of a person has been caused either by :

(i) committing, or threatening to commit any act forbidden by the Indian Penal Code, or by

(ii) unlawful detaining, or threatening to detain any property.

Such an act should be to the prejudice of any person whatever.

(i) Act forbidden by the Indian Penal Code

It has been noted above that if a person commits or threatens to commit an act forbidden by the Indian Penal Code with a view to obtaining the consent of the other person to an agreement, the consent in such a case is deemed to have been obtained by coercion. For instance, A threatens to shoot B if B does not agree to sell his property to A at a stated price, B's consent in this case has been obtained by coercion.

For coercion, it is not necessary that the Indian Penal Code should be applicable at the place where the consent has been so caused. Explanation to Section 15 makes it clear that to constitute coercion, "it is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed." The following illustration would explain the point :

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code. A afterwards sues B for breach of contract at Calcutta. A has employed coercion, although his act is not an offence by the law of England, and although Section 506 of the Indian Penal Code was not in force at the time when, or at the place where,

the act was done.

In Ranganayakamma V. Alwar Setti, the question before the Madras High Court was regarding the validity of the adoption of a boy by a widow, aged 13 years. On the death of her husband, the husband's dead body was not

allowed to be removed from her house for cremation, by the relatives of the adopted boy until she adopted

the boy. It was held that the adoption was not binding on the widow as her consent had been obtained by coercion.

In Chikkan Ammiraju v. Chikkam Seshama, the question before the Madras High Court was that whether coercion could be caused by a threat to commit suicide. In this case A, a Hindu, by a threat of suicide, induced his wife and son to execute a release deed in favour of A's brother in respect of certain properties claimed as their own by the wife and the son. The question before the court was whether a threat to commit suicide could be considered to be an act forbidden by the Indian Penal Code.

It was held by Wallis, C.J. and Seshagiri Ayyar, J. that a threat to commit suicide amounted to coercion within the meaning of Section 15 of the Indian Contract Act and therefore the release deed was voidable. It was observed that the threat to commit suicide could be considered to be an act forbidden by the Indian Penal Code and also the threat to kill oneself was an act where a person was acting to his own prejudice and also to the prejudice of his wife and the son, and thus the requirements of Section 15 were satisfied.

Oldfield, J., who dissented, was, however, of the view that suicide is not an act forbidden by the Indian Penal Code (only an attempt to commit suicide is punishable under Section 309, Indian Penal Code) and a threat to do that could not be considered to be a threat to do a forbidden act within the meaning of Section 15 of the Contract Act.

2. **UNDUE INFLUENCE** If the consent of a party of the contract has been obtained by undue influence, the consent is not the free consent which is needed for the validity of a contract. If the consent has been caused by undue influence, the contract is voidable at the option of the party whose consent has been so obtained. Section 16 defines undue influence as under :

"16. "Undue influence" defined.—(1) 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. (2) In particular and without prejudice to the generality of the foregoing principle, 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 where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by

or as a he court matter Moreover

reason of age, illness or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.. Nothing in this sub-Section shall affect the provision of

Section 111 of the Indian Evidence Act, 1872."

The doctrine of undue influence was evolved by the Court of Equity in England, and the same has been explained by Ashburner as underl :

In a court of equity if A obtains any benefit from B, whether under a contract or as a gift exerting an influence over B which, in the opinion of the court, prevents B from exercising an independent judgment in the matter in question, B can set aside the contract or recover the gift. Moreover, in certain cases, the relation between A and B may be such that A has peculiar opportunities of exercising influence over B. If under such circumstances, A enters into a contract with B, or receives a gift from B, a court of equity imposes upon A the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it.

Explaining the nature of the provisions contained in Section 16, Indian Contract Act, 1872 and the adoption of English law in India, the Supreme Court has observed? :

The doctrine of undue influence under the Common Law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence-spiritual and temporal. The doctrine applies to acts of bounty as well as to other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another. The Indian enactment is founded substantially on the rules of English Common Law.

3. FRAUD When the consent of a party to the contract has been obtained by fraud, the consent is not free consent which is necessary for the formation of a valid contract. In such a case the contract is voidable at the option of the party whose consent has been so obtained.? Fraud or deceit is also a tort, for which an action for damages can also lie. Section 17 defines fraud as follows:

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive

another party thereto or his agent, or to induce him, to enter into the contract :

- (1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;
 - (2) the active concealment of a fact by one having knowledge or belief of the fact;
 - (3) a promise made with any intention of performing it;
 - (4) any other act fitted to deceive;
 - (5) any such act or omission as the law specially declares to be fraudulent.
- Explanation.—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."

In *State of Andhra Pradesh v. T. Suryachandra Rao*, the respondent surrendered certain land as found surplus under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. Subsequently, it was noticed that the land which was surrendered had already been acquired in proceedings under the Land Acquisition Act, 1898. Holding it a case of fraud on the part of the respondent, the Apex Court explained :

By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others.

Fraud, the Court said, "is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss."

The Court referred to English case, *Derry v. Peek*, wherein the Court described that "fraud" was proved when it was shown that "a false representation has been made :

- (i) knowingly; or
- (ii) without belief in its truth; or
- (iii) recklessly, careless whether it be true or false.)

The respondent's act of surrendering the land which had already been acquired by the State and the same had vested in it, amounted to fraud. Merely because an enquiry was made, the Tribunal was held not divested of the power to correct the error when the respondent had already committed a fraud.

Again, in *Bhaurao Dagdu Paralkar v. State of Maharashtra*, the Apex Court explained :

"Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter.

In the instant case, the Apex Court appointed a Commission to examine 354 cases who were granted pensionary benefits under the Freedom Fighters' Pension Scheme on the basis of vague documents. Making false claims of participation in freedom struggle, the Court said amounted to disrespect to the whole country, a dishonourable venture, which was required to be dealt with sternness to send out a message that they were not freedom fighters but were traitors sullyng the name of freedom fight.

According to Section 17, following are the essentials of fraud : I. There should be a false statement of fact by a person who

himself does not believe the statement to be true. II. The statement should be made with a wrongful intention

of deceiving another party thereto and inducing him to enter into the contract on that basis.

4. MISREPRESENTATION An innocent misstatement or false statement is known as misrepresentation. Section 18 of the Indian Contract Act, 1872 defines "misrepresentation" as under :

"Misrepresentation" means and includes

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject

of the agreement." Positive assertion, i.e., an explicit statement of fact by a person of that which is not true, though he believes it to be true amounts to misrepresentation. There should be a false statement made innocently, i.e., without any intention to deceive.

When there is a breach of duty whereby the person making a false statement gains some advantage at the cost of the other party, and the statement though false is made without an intention to deceive, it also amounts to misrepresentation. For example, Section 57, Indian Easements Act, 1882 lays down that the grantor of a licence is bound to disclose to the licensee any defect, which is likely to be dangerous to the person or property of the licensee, of which the grantor is aware but the licensee is not. Omission to make such a disclosure, if it is without any intention to deceive, would amount to misrepresentation.

If one party, acting innocently, causes another party to make a mistake as to the substance of the thing which is the subject of the agreement, there is said to be misrepresentation.

In case of misrepresentation the person making the statement is innocent, and he makes the statement without any intention to deceive the other party. His statement is false although he himself believes that the same is true. It is known as innocent misrepresentation as against fraud, where the person making a false statement knows that the same is false but makes the same intentionally to deceive the other party and make him enter into an agreement which he would not have done otherwise. For instance, A sells a horse to B which is unsound but A himself does not know about this fact. He tells B that the horse is sound. There is misrepresentation.

In *Derry v. Peek*, the directors of a company stated in the prospectus of the company that they had been authorized to run tramways with steam power. Sanction from the Board of Trade had yet to be obtained but the directors honestly believed that the same would be obtained as a matter of course. The Board of Trade refused to grant the permission for the use of steam power. In an action by a shareholder against the directors for fraud, it was held that there was a mere misrepresentation but no fraud as the statement had/

Q 2. Define under influence what is the effect of undue influence on contract? Discuss

ANS 2. 12. UNDUE INFLUENCE If the consent of a party of the contract has been obtained by undue influence, the consent is not the free consent which is needed for the validity of a contract. If the consent has been caused by undue influence, the contract is voidable at the option of the party whose consent has been so obtained. Section 16 defines undue influence as under :

"16. "Undue influence" defined.-

(1) 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.

(2) In particular and without prejudice to the generality of the foregoing principle, 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 where he stands in a fiduciary relation to the other; or

(b) 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.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. Nothing in this sub-Section shall affect the provision of

Section 111 of the Indian Evidence Act, 1872."

The doctrine of undue influence was evolved by the Court of Equity in England, and the same has been explained by Ashburner as under :

In a court of equity if A obtains any benefit from B, whether under a contract or as a gift exerting an influence over B which, in the opinion of the court, prevents B from exercising an independent judgment in the matter in question, B can set aside the contract or recover the gift. Moreover, in certain cases, the relation between A and B may be such that A has peculiar opportunities of exercising influence over B. If under such circumstances, A enters into a contract with B, or receives a gift from B, a court of equity

imposes upon A the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it.

Explaining the nature of the provisions contained in Section 16, Indian Contract Act, 1872 and the adoption of English law in India, the Supreme Court has observed? :

The doctrine of undue influence under the Common Law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence-spiritual and temporal. The doctrine applies to acts of bounty as well as to other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another. The Indian enactment is founded substantially on the rules of English Common Law.

Essentials of undue influence

In order to constitute undue influence, it is necessary to prove 1. Ashburner on Equity, 2nd ed., p. 299.

that :

(1) 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

(2) such a person uses his dominant position to obtain an unfair advantage over the other. It is manifest that both the conditions have ordinarily to be established by the person seeking to avoid the transaction : he has to prove that the other party to the transaction was in a position to dominate his will and that the other party had obtained an unfair advantage by using that position.

If the necessity to sell property could be proved and there was no evidence that the purchaser was able to dominate the will of the seller, and apart from that the sale consideration was reasonable and adequate, it was held that the agreement was not vitiated by fraud or undue influence.

Person in dominant position and obtaining of unfair advantage

Sometimes, one of the parties to the contract may be in such a dominant position in relation to the other that he has peculiar opportunity of exercising that position to the prejudice of the other party. If the dominant party takes an undue advantage of his position in procuring a contract to the detriment of the other contracting party, the contract is voidable at the option of the party whose will is so dominated.

In the following cases, a person is deemed to be in a position to dominate the will of another

(1) where he holds a real or apparent authority over the other,

or,

(2) where he stands in a fiduciary relation to the other, or,

(3) 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.

(1) Real or apparent authority

If a person has an authority over the other contracting party, it is expected that he would not abuse that authority to gain an

undue advantage from the other. An employer may be deemed to be having authority over his employee, an income-tax authority over the assessee, a police or a judicial officer over the accused, or a licensing authority over the licensee.

(2) Fiduciary relation

Fiduciary relation means a relationship of confidence and trust. When a person reposes confidence in the other, it is expected that he will not be betrayed. If a person betrays the confidence and trust reposed in him and gains an unfair advantage over the other party in any contract, the suffering party has an option to avoid the contract. The principle of undue influence applies to every case, where influence is acquired and abused, where confidence is reposed and betrayed.

Examples of fiduciary relationship are solicitor and client,² trustee and cestui que trust (beneficiary), spiritual adviser and devotee,⁴ medical attendant and patient, parent and child, husband and wife, master and servant, creditor and debtor, principal and agent, landlord and tenant, lover and beloved, and guardian and ward.¹⁰ "The fiduciary relationship is not exhausted by the few well-known patterns of relationship. Any relationship in which one party enjoys the "active confidence" of another party who is to lean on him and is inclined to repose implicit confidence in him is enough

to approximate to the kind of relationship."

For example, A, having advanced money to his son B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond

from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

In cases of fiduciary relationship, if the person in a dominant position has gained undue advantage in any transaction, the burden of proof lies on such a person to show that the transaction was without undue influence, and in the absence of such a proof the transaction is liable to be cancelled. The rule regarding the burden of proof in such cases is contained in Section 111, Indian Evidence Act, 1872, which reads as under :

"Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a

position of active confidence."

In *Mannu Singh v. Umadat Pande*, the plaintiff, an aged person executed a deed of gift in respect of the whole of his property in favour of the defendant, who was plaintiff's guru or spiritual adviser. The only reason for the gift was his desire to secure benefits to his soul in the next world and also in view of the plaintiff having heard recitation of the holy book, Bhagwat. Soon after the execution of the said deed, the plaintiff applied for the cancellation of the same by a suit brought by him under Section 39 of the Specific Relief Act, 1877.

Section 111, Indian Evidence Act, 1872 was applied to this situation, according to which in case of a person being in a position of active confidence, the burden of proof lies on such a person who enjoys such a confidence. It was held that because of the fiduciary relationship between the parties, and the absurdity of the reason given by the plaintiff in the gift deed for executing the gift deed, and in view of the provision contained in Section 111, Indian Evidence Act, the defendant must prove the absence of undue influence, and since he has failed to prove the same, the plaintiff is entitled to obtain the cancellation of the deed.

The decision in *Phillip Lukka v. Franciscan Association* is another illustration where the property was gifted under spiritual domination. In this case, the plaintiff was a congenital invalid suffering from indifferent health all through his life. He had a deep religious bend, with high regard for religious superiors and a deep sense of obedience to priesthood. A priest, Father Francis, who represented the defendant-Franciscan Association got his only property gifted to the association by assuring him of the preparedness of the Association to look after him and his mother. The plaintiff was directed to

keep the matter secret. The registration of the gift deed was managed to be made at a far away place.

It was held that the said gift of property was vitiated by undue influence and fraud, and the plaintiff was allowed to recover back his property.

In *Manali Singhal v. Ravi Singhal*, there was a family settlement between a husband and wife on 4th Nov., 1994 for the payment of maintenance to the wife, after the husband deserted the wife and decided to live separately.

Subsequently, since January, 1997 the husband failed to pay the agreed amount of maintenance to the wife (plaintiff No. 1) and school fees of their daughter (plaintiff No. 2). The said settlement for payment of maintenance had been made in the presence of equal number of persons representing both husband and wife and they also signed the settlement. The amount of maintenance payable was written in words and figures in hands of husband.

Under these circumstances, it was held that the said settlement had been made with the free will of the husband without any coercion or undue influence and, therefore, he was bound to abide by the settlement. (3)

Person in mental or bodily distress

A person is deemed to be in a position to dominate the will of another also in a situation, 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. A person's mental capacity may have been affected on account of his old age, illness, or mental or bodily distress, and there is every possibility that such a person's position may be exploited and unfair advantage taken in such a situation. The law tries to afford protection to such persons also. If a contract is made to the prejudice of such a person, there is deemed to be undue influence in such a case. For example, A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

1. A.I.R. 1999 Delhi 156.

In *Merci Celine D'Souza v. Renie Fernandez*, the plaintiff, a mentally infirm person, incapable of protecting his interest and totally dependant on the defendants for his existence, gifted his property in favour of the defendants. It was found that the defendants had obtained an unfair advantage and the gift deed was not attested by the two witnesses as required by law.

It was held that the settlement deed of the property was liable to be set aside on the ground of undue influence.

Presumption of undue influence in Unconscionable Bargains

Ordinarily, it is for the plaintiff to prove that his consent was not free. When the transfer of property is through a sale deed, duly executed and registered and the vendor neither pleads nor proves the existence of undue influence, and the transaction also does not appear to be unconscionable, the vendor having failed to prove undue influence, the transaction cannot be avoided.

In case of unconscionable bargain between the parties on an unequal footing, the law raises a presumption of undue influence. Where a person who is in a position to dominate the will of another, enters into a contract with him, the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Thus, when, 1. One of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and 2. The transaction between the parties appears to be unconscionable, the law raises a presumption of undue

influence.⁵ An unconscionable bargain is one as no sane man not setting under a delusion would make, and no honest man would take advantage of. In such a case, it is for the dominant party to rebut the presumption of undue influence. If a party has got exorbitant gain at the cost of the other party, it is for him to prove that this

advantage had not been gained by undue influence.

For example, A being in debt to B, a money-lender of the village, contracts a fresh loan on terms which appear to be unconscionable, it lies on A to prove that the contract was not induced by undue influence.

In *Niko Devi v. Kirpa*, the plaintiff, who was an illiterate rustic girl, had started living with the defendant ever since she was a child, as her father and mother had died when she was of 2 and 10 years of age, respectively. The defendant was the father's brother's son (cousin brother) of the plaintiff. The plaintiff was not only brought up by the defendant, but the latter also performed her marriage. The defendant managed all her movable and immovable property, which she had inherited from her parents. He divested her of her entire property by a gift deed. She contended that the impugned gift deed was a result of fraud, coercion and undue influence by the defendant, and the same was liable to be set aside. It was held that the defendant was not only in a position to dominate the will of the plaintiff by virtue of his being loco-parentis to her, but the impugned transaction was apparently unconscionable one as she stood divested of her entire property

by virtue of the gift deed. The burden of proof was, therefore, on the defendant to show that while making the transaction, the plaintiff had an independent advice available to her and the impugned gift deed was a voluntary act on her part with due understanding of the nature of the transaction. The defendant having failed to prove the same, the plaintiff was held entitled to avoid the transaction.

In *Diala Ram v. Sarga*, a debtor took fresh loan from a money-lender to whom he was already indebted agreed to pay exorbitant rate of interest and also to deliver some bloosa (wheat husk), a presumption of undue influence was said to have arisen. In this case the position was held to be similar to illustration (c) to Section 16 and the burden of proof was on the money-lender to show that there was no undue influence.

In *Takri Devi v. Rama Dogra* an illiterate old lady living separately from her husband gifted practically all her property, which included an apple orchard, valued at Rs. 2 lacs to the donee, who was her lawyer. There was no other relationship between the donor and the donee. It was held that there was fiduciary relationship between the two, the donee was in a position to dominate the will

of the donor, the transaction was unconscionable, and there was presumption of undue influence in the case.

In *Wajid Khan v. Raja Ewaz Ali Khan*, an old, illiterate, pardanashin lady, who was herself incapable of transacting any business conferred a grant of her substantial property without any valuable consideration in favour of her confidential managing agent. The Privy Council held that it was incumbent on the grantee to show that he had made proper use of confidence reposed by the lady in him and there was no undue influence.

A pardanashin woman may not be illiterate. If she is practically excluded from social intercourse and communion with the outside world, she will fall in this category.?

When a person enters into a contract with a pardanashin or illiterate lady, the burden of proof lies on such person and he has to prove that the terms of the contract are fair and equitable, and that the document was explained to her and she understood the same, and that she acted on independent advice. ,

In *Lakshmi Amma v. Telengala Narayana Bhatta*, the executant of a deed of settlement was a person of advanced age and was suffering from diabetes and other ailments and whose physical and mental condition was very weak. He executed a deed settling his entire property in favour of one of his grandsons to the exclusion of his own issues and other grandchildren. He did not make any provision for the residence of his wife in the said residential

house and also debarred himself from dealing with the property in his lifetime. He subsequently applied for the cancellation of the deed on account of undue influence. It was held by the Supreme Court (reversing the decision of the Kerala High Court) that the facts and circumstances raised a grave suspicion as to the genuineness of the execution of the document, and it was for the grandson, who is the settlee of the property, to show that the said deed had been executed voluntarily and without any external pressure or influence.

In *Vinayakappa v. Dulichand*, there was a sale deed of a multi-storeyed building situated on the main road within the municipal area. Looking to the commercial prosperity of the area, the consideration was extremely inadequate. Moreover, the seller's brother continued to occupy a portion of the property without paying any rent. The buyer of the property did not pay any taxes

of his wife inren. He did nahe exclusion e intly applied dealing with and residentiake any

on the same for a number of years. It was also found that the seller and the buyer were having the relationship of borrower and money-lender and thus had fiduciary relationship. Under these circumstances, it was held that presumption of undue influence was there, and the transaction was a loan transaction rather than sale. No title therefore passed to the buyer of the property.

In *Sethani v. Bhanna*, a sale deed of her property was executed by an old, blind, illiterate and a tribal woman in favour of the respondent, on whom she was totally dependent. There was no evidence of consideration having passed at the time of sale, or the respondent having proved the absence of undue influence. The respondent was held bound to return the advantage obtained by him in this case.

In *Rukmini v. C.V. Krishnan Nair*, an old lady of 70, who had a paralytic stroke was made to execute a gift deed without the contents of deed being made known to her. It was held that the burden of proof was on the donee to show that there was no undue influence.

In *Chunni Kaur v. Rup Singh*,³ a presumption of undue influence was raised when a person, who being in dire need of money, for the purpose of making an appeal in a court to establish his claim to some property, borrowed Rs. 3,700 but executed a bond of Rs. 25,000 promising to pay the same within a year of the recovery of possession of the estate. Because the contract was considered to be unconscionable, it was held that the plaintiff was entitled to a decree of Rs. 3,700, i.e., the actual amount of loan given with a simple

interest at the rate of 20 per cent per annum from the date of bond to the date of decree and 6 per cent per annum from the date of decree until the date of payment.

In *Kirpa Ram v. Sami-ud-din Ahmad Khan*," the respondent borrowed from the appellants a sum of Rs. 900 executing a bond to pay compound interest at 2 per cent per mensem, with monthly rests. At the time of executing the bond, the respondent was only 18 years old and was a known spendthrift and a drunkard. It was held to be an unconscionable bargain, and the court allowed only simple interest on the said amount instead of compound interest.

Fraud/undue influence-Execution of document by old, illiterate and ailing person

There was execution of document by old, illiterate, ailing

/person who was unable to comprehend the nature of the document or the contents thereof, a classic proposition of law by the Privy Council needs to be noted. In *Mst. Farid-Un-Nisa V. Munshi Mukhtar Ahmad and another*, it was observed as follows:

"It is, therefore, manifest that the rule evolved for the protection of pardalinashin ladies not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardalnashin

ladies or not."

The logic is equally applicable to an old, illiterate, ailing person who is unable to comprehend the nature of the document or the contents thereof. It should be established that there was not mere physical act of the executant involved, but the mental act. Observations of this Court, though in the context of pardalinashin lady in *Mst. Kharbuja Kuer v. Jang Bahadur Rai and others*, are logically applicable to the case of the old, invalid, infirm (physically and mentally) and illiterate persons.³ When there is no domination of will

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 undue influence would not be raised. For example, A applies to a 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.⁴

When the person taking the advantage in a transaction was not in a dominant position over the other, the presumption of undue influence will not be raised if the transaction appears to be unconscionable.

In *Shrimati v. Sudhakar R. Bhatkar*,⁵ the plaintiff was an illiterate lady managing her properties. The defendant was living in a part of the house owned by the plaintiff as a tenant. He treated the plaintiff as his mother. He persuaded her to gift her property to him, which she did. The gift deed was registered in his favour.

It was held that mere persuasion by the plaintiff to the defendant to gift the property did not mean undue influence. There was nothing to show that he was able to dominate her will. The transaction was held to be valid as there was no undue influence in this case.

Merely because the parties were nearly related to each other or merely because the donor was old or of weak character, no presumption of undue influence can arise.

In *M. Rangasamy v. Rengammal*,⁶ the mother of the plaintiffs had bequeathed certain properties in their favour. The plaintiff/ respondent had challenged the gift as executed under influence. It was established that the mother bequeathing the property was physically healthy and in a sound disposing mind and that she voluntarily executed the documents with full knowledge of the nature and purport of the documents. Merely on account of near relationship, the Apex Court held that presumption as to undue influence was not permissible.

In *M/s. Chendur Forgings (P.) Ltd. v. M/s. Bhandari Interstate Carriers, Madras*, the respondent/plaintiff, carrying on business as carriers agreed to accept the consignment and deliver it to the defendant's factory at Madras. The truck carrying the assignment met with an accident on the way. In a meeting held between the parties, it was agreed that a crane would be engaged to lift the consignment from the accident spot. The defendant had also accepted to pay crane charges along with the freight charges at the time of taking delivery of consignment from the plaintiff. The defendant himself had admitted that the accident to the machine was certainly not due to the negligence of the plaintiff carrier. In view of the above facts, it was held that the agreement could not be said to be executed by undue influence.

Effect of undue influence

Section 19-A of the Indian Contract Act, 1872, declares 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. For

example, A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A, for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.³

Because of undue influence one party to the contract may have taken an undue advantage under the contract, or the party entitled to avoid the contract may have already received some benefit under the contract. The court in such cases has been empowered to set aside the contract either absolutely or upon such terms and conditions as the Court may deem just. Seco id para to Section 19-A incorporates the following provisions in this regard :

"Any such contract may be set aside absolutely, or if the party who was entitled to avoid it has received any benefit there under, upon such terms and conditions as to the Court

may seem just."

For example, A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay Rs. 100 with such interest as may seem just.

The object of the above stated provision is that a party who seeks rescission of the contract must also do equity and, if he has received any benefit under the contract, he should compensate the other party.

A provision to that effect is also contained in Section 30, the Specific Relief Act, 1963, which runs as under :

"On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.")

Q 3. What do you understand by wagering contract? What are the essentials? Explain.

ANS 3. ELEMENT BY WAY OF WAGER

(SECTION 30) Section 30 declares wagering agreements as void. The Section is as follows :

"30. Agreement by way of wager void.-Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide by the result of any game or other uncertain event on which any wager is made. Exception in favour of certain prizes for horse racing.-This Section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any place, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race. Section 294-A of the Indian Penal Code not affected.-Nothing in this Section shall be deemed to legalize any transaction connected with horse racing, to which the provisions of Section 294-A of the Indian Penal Code apply."

What is a wagering agreement

The Contract Act does not define a wagering agreement. The nature of such an agreement has been explained by Hawkins J. in

Carlill v. Carbolic Smoke Ball Co.,' in the following words:

A wagering contract is one by which two persons, professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither of the contracting parties having any other interest in that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties.

Essentials of a wagering agreement

The essentials of a wagering agreement are :

1. The parties have opposite views regarding an uncertain event.
2. There are chances of gain or loss to the parties on the determination of the event one way or the other.
3. The parties have no other interest except winning or losing of bet.

1. Opposite views about an uncertain event

If A holding the view that it would rain on 1st January next and B saying that it will not, agree that if it rains on that day, B will pay Rs. 100 to A, and if it does not rain, A will pay Rs. 100 to B, it is a wagering agreement.

According to the definition of wager given by Hawkins, J. in *Carlill v. Carbolic Smoke Ball Co.*, the parties should have opposite views touching the issue of a "future uncertain event," but that does not appear to be wholly correct. The opposite views could be in respect of a past or a present fact or event also. The only thing needed is that there should be uncertainty in the minds of the parties about the determination of the event one way or the other. Thus, the parties may bet as to what the population of a city is, or, a particular plane had crashed on a particular date or not. Similarly, the parties may bet "upon the result of an election which is over, if the parties do not know in whose favour it has gone."?)

other losing, on the determination of the event one way or the other. Thus, if A agrees to pay B Rs. 100 if it does not rain on 1st January next, and B agrees to pay A Rs. 100 if it rains on that day, each party has a chance to win or lose, depending upon the determination of the event one way or the other. If either of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering contract.

In *Babasaheb v. Rajaram*, it has been held that if out of the gate money which has been recovered, the payment is to be made only to the winner of a certain game, it is not a wagering contract because each party has a chance of winning something but no chance of losing anything. The facts of the case are : Two wrestlers, A and B, entered into an agreement to wrestle in Poona on a certain day. They agreed that if a party failed to appear on that day, he would forfeit Rs. 500 to the other party. They further agreed that the winner will receive the sum of Rs. 1,125 out of the gate money, B failed to appear and A sued him to recover the sum of Rs. 500. B pleaded that it was a wagering agreement in so far as the payment of the gate money to the winner depended on the happening of an uncertain event. This plea was rejected and A was held entitled to recover the amount. The agreement was held to be not a wagering one "since neither side stood to lose according to the result of the wrestling match. The agreement was that the winner was to take the whole of the proceeds of the gate money, and though the loser was to get nothing, he was not to pay anything and was not to be out of pocket in any way."³

In the above case, nothing was to go out of the pocket of the loser of the match. The payment to the winner had to be made out of the gate money. The position would have been different if the prize was not to be paid out of

the gate money as in the above case, but the payment to the winner was to go out of the pocket of the loser of the game. In *Diggie v. Hige*, each one of the two parties in a walking match deposited £ 200 with a stakeholder with the condition that the loser would forfeit the amount of £ 200 paid by him. The agreement was held to be a wagering one.

(3) No other interest in the event except the amount of bet

In a wagering contract neither of the contracting parties have

any other interest in that contract than the sum or stake he will so win or lose, and there is no other real consideration for the making of such contract by either of the parties. This factor distinguishes a wagering agreement from the other valid conditional contracts like contracts of insurance. In an insurance contract, it is necessary that the person affecting insurance must have "insurable interest" in the subject-matter insured. Insurable interest means an interest in the existence and preservation of the thing insured. A wife, for example, has an insurable interest in her husband's life and she can take an insurance policy on her husband's life by paying some regular premium. A person can take an insurance policy covering the risk of fire to the property owned by him. But if a person does not have an insurable interest in the life of another person, or in the property insured, the agreement will be a mere wager and, therefore, void. If you take an insurance policy to insure Taj Mahal or Kutab Minar, the agreement would be void, but if you get your own house insured, the agreement will be valid. In the absence of an insurable interest, the receiving of money depends on the happening of an event which does not cause any loss to the recipient and, therefore, such an agreement is void.

In *Brahm Dutt Sharma v. Life Insurance Corporation of India*, the plaintiff, Brahm Dutt Sharma, financed an insurance policy taken by one Mukhtar Singh on his life, for Rs. 35,000. Mukhtar Singh himself was a village school teacher without sufficient means to afford such a policy. Mukhtar Singh made the nomination in favour of the plaintiff and not in favour of his own wife and children. On the death of Mukhtar Singh the question arose, whether the plaintiff could recover the sum assured. It was held that the plaintiff had affected and financed this insurance policy on the life of the deceased without having an insurable interest in his life, and as such the contract of insurance was in the nature of a wagering contract within the meaning of Section 30 of the Contract Act and, therefore, void, and the plaintiff could not recover anything. Prize Money on lottery tickets

Lottery means a scheme for distribution of prizes by draw of lots or by any other procedure which depends on chance only. The agreement to pay

prizes on lottery is an agreement by way of wager and, therefore, void under Section 30 of the Contract Act.

In Shekharchand Jain V. Ramnarayan³ the question was regarding recovery of prize on a State Lottery Ticket. It was held

that though a State lottery is not illegal, the same is nonetheless in the nature of wager, and, therefore, void. Hence, a person declared winner of prize money on lottery cannot sue for the recovery of the prize money. Similar was also the decision in Subhash Kumar Manwani v. State of M.P. It has been held in this case that an agreement to pay prize money on a lottery ticket is a wagering agreement and, therefore, such an agreement is void under Section 30 of the Contract Act. Further, neither the provisions of the State or the Central Act controlling activities relating to lottery would change the nature of such an agreement. Hence, the dismissal of the plaintiff's claim for recovery of the prize money by the lower courts was held by the M.P. High Court to be justified. Speculative Transactions

One of the forms of wagering contracts is an agreement to pay differences only, rather than actually making or taking the delivery of the goods. Although in a contract, the parties may agree about the sale of goods at a stated price at a future date, but their real intention may not be the supply of goods but only the payment of difference in the price by one party to the other, depending on the rise or fall of market. Such an agreement is wagering.

In Kong Yee Lone & Co. v. Lowjee Nanjee,² the owner of a rice mill, with a capital of a little over one lac of rupees, agreed to sell 1,99,000 bags of rice costing above 5 crore of rupees, i.e., worth over 500 times the capital. The obvious inference in this case was that neither party intended the performance of the contract. The agreement was held to be by way of wager and thus void.

A contract which provides for payment of differences only without intention on the part of either of the parties to give or take delivery of the goods is admittedly a wager within the meaning of Section 30 of the Contract Act. Thus, if there is a contract for the sale and purchase of an article at a place, where it has never been produced or traded, and according to the course of dealing, the settlement in such cases is made by paying differences only, it is a wagering agreement.*

When the parties intend the performance of a future contract and such a performance is not otherwise impossible, it would be a valid business transaction rather than a wagering contract. Thus, if in a contract for sale of shares, an actual delivery is intended, it

cannot be considered to be a wagering contract. "In all forward contracts, there is an element of speculation. Such a contract is not a wagering contract unless both the parties intend not to take delivery in any event, and, whatever happens, only to adjust the difference."

So long as the parties are not absolved in any event from delivering the commodity, and the delivery has to be made when demanded, it is not a wagering agreement.

A contract of agency for the sale of raffle tickets is not an agreement by way of wager, although raffle itself may constitute several agreements by way of wager by the person promoting the raffle and the persons purchasing tickets with the object of winning the prize depending on the uncertain event of a draw in favour of the ticket holder." Teji Mandi Transactions

It is a contract under which one of the parties is given a double option either to purchase or to sell, whichever would suit him, a certain commodity, at a certain rate, on a specified future date, i.e., the vaida day. For example, A, by paying a certain premium or commission per bag to B, is given an option by B to purchase or sell 100 bags of wheat at Rs. 200 per bag on 1st January next. If the price of wheat on 1st January comes down, e.g., to Rs. 180, A can exercise the option to sell the wheat at the agreed price of Rs. 200 per bag. On the other hand, if the price of wheat rises, e.g., to Rs. 225 per bag, A may exercise the option to purchase the same at the agreed price of Rs. 200. In case of such transactions also, the validity of the contract would depend on the fact whether the parties intended to actually affect the delivery of the goods or not. If the intention is to settle by paying the differences only, the agreement would be a wager, and thus void.⁵ 1 Validity of wagering agreements and collateral transactions

Section 30 declares an agreement by way of wager as void. It further states that "no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager

is made." In *Badridas Kothari v. Meghraj Kothari*,¹ A and B entered into wagering transactions in shares. B became indebted to A. B then executed a promissory note in favour of A to pay the amount as well as interest thereon. It was held that A could not recover the amount.

Though a wagering agreement is void and unenforceable, it is not (forbidden by law and therefore the object of a collateral agreement is not unlawful under Section 23 of the Contract Act.² Thus, agreements collateral to wagering agreements are not void. In *Gherulal Parakh v. Mahadeodass*, the

appellant and the respondent entered into partnership for carrying on wagering transactions. The respondents, who incurred some loss on behalf of the firm, brought an action against the appellant to recover his share of the loss. The claim was allowed by the Supreme Court. Similarly, in *Gulam Mustaffakhan v. Padamsi*, it was held by the Nagpur High Court that when two partners make a contract, even of a wagering nature, and one of the parties satisfies his and his co-partner's liability, such a partner can legally claim indemnity from the other.

Although in a raffle, the agreements by the persons promoting the raffle and the persons purchasing tickets with the object of winning the prize depending on the uncertain event of a draw in favour of the ticket holder are by way of wager, but raffle itself is not illegal nor is it opposed to public policy. Therefore, a collateral contract of agency for the purpose of sale of raffle tickets is not an agreement by way of wager, and as such, the same is perfectly valid and enforceable by law.⁵

In the State of Bombay, contracts collateral to or in respect of wagering transactions have been declared to be void by the provisions of the Bombay Act III of 1856. This Act has not been repealed by the Indian Contract Act, 1872.

Section 30 contains an exception in favour of certain prizes for horse racing. According to this exception, a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or towards any place, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race, shall not be deemed to be unlawful. There is no exception in respect of lotteries. Therefore,

a contract to purchase a lottery ticket,' or to share the prize won in a lottery, are void and unenforceable. A crossword puzzle where the winning of the prize depends on the chance of a solution tallying an already set solution is a lottery, but where the result depends on the exercise of the skill of the person sending the entry, it is not a lottery.*