

SET 6

1. Principle: All agreements are contracts if they are made by the free consent of the parties to the contract.

If a person was forced to give his consent as a result of use of illegitimate force, the consent is said to be obtained by coercion and is not considered free consent.

Explanation: Illegitimate force means doing or threatening to do any act contrary to the law.

Facts: One day Shiney was taking sneak peeks at Chameli while she was taking a shower. Shiney was actor and had been casted by Chameli's husband Ram G. Sharma in five of his big budget movies. Chameli threatened Shiney that if he does not move out of his husband's movies on his own, she'll file a police case against her for outraging the modesty of a female. Shiney accepted but later went to court alleging coercion. What should be the decision?

- Shiney can win because clearly he was forced to accept the contract against his will by Chameli who blackmailed him into accepting the new offer
- Shiney can win because Chameli has blackmailed him into accepting this offer and blackmailing is clearly against the law
- Chameli can win because Shiney was committing a reprehensible act and must be punished for his indiscretion
- Chameli can win because the law does not prohibit filing a criminal/police case against anyone. Thus, the consent cannot be said to be hit by coercion.

Answer (d): Chameli threatened with filing a police case which is not against the law of the land. If Shiney believes he has not violated the law he has nothing to be afraid of. In any case, since filing police cases is not against the law it cannot be said that Shiney's consent was taken because of coercion.

2 Principle: When a person signs an agreement under undue influence from another person who has threatened to harm the person, property or reputation of the first person or someone closely related to him, the agreement so signed is not enforceable.

Explanation: Undue influence includes anything that forces a person to do something.

Facts: Saumya is very keen on purchasing a plot of land owned by Bhanu. When all her attempts to convince Bhanu to sell the plot fail, she threatens to institute a case against her illegal theft of electricity. Bhanu had been clandestinely tapping power off an electricity line for use in her flour-mill. Bhanu signs an agreement to sell the plot of land to Saumya at a price 25% above the market price but later he seeks to get the agreement annulled citing undue influence.

- The agreement must not be annulled since Bhanu was indeed guilty of theft of electricity
- The agreement must be annulled since Bhanu signed it under undue influence
- The agreement must be annulled since Bhanu's consent was vitiated by duress
- The agreement must not be annulled since Bhanu has fact gained from the same.

Answer (b): It is clear from the facts of the case that Bhanu signed the agreement only because she was threatened with a case by Saumya. Hence (b) is the answer. Note that undue advantage is not required to be proved.

3 Principle: Ragging is a punishable offence as per as the order of the Hon'ble Supreme Court of Rawanda and Punishment for the same is 6 month of Imprisonment with or without fine.

Explanation: Ragging means any exercising undue influence on anyone, making him change his usual course of action.

Facts: A, B and C senior student of Medical College decided to tease some fresher's. After seeing a fresher A, B and C went to D and asked him to dance in the college ground, which D refused. A, A and C being senior took the thing personally and decided to teach him a lesson and they brought an iron rod and started beating him up, which finally resulted in the death of D. Are they Liable for ragging?

- A, B and C are guilty of the offence of Ragging
- A, B and C are not guilty as they didn't have intention to hurt D
- They are not guilty of any offence and they did not succeed in changing D's behaviours
- A, B and C are guilty of the offence of Physical Harassment.

Answer (c): As A, B and C were not successful in getting D to do what they wanted.

4 Principle: Where one party is in a position to dominate the will of the other, and where the contract between them is apparently unfair, the law presumes that the contract had been entered into, and the consent of the person obtained, through undue influence.

Facts: The RBI Sets the base rate (below which no bank may lend) at 10.5% Rudal Shah a small farmer with no collateral to offer who needs money to have his only buffalo treated borrows Rs. 10,000/- from Poorvanchal Grameen Bank @ 11.5%. After paying a couple of instalments, Rudal refuses to pay claiming that his consent was obtained through undue influence.

- The bank cannot sue Rudal for the remaining amount
- Rudal Shah is liable to pay the rest of the EMIs
- This is a clear case of a person's consent being obtained through undue influence
- The contract will not be presumed to have been finalised through undue influence.

Answer (b): The principle states that if a contract is formed on the basis of undue influence, such agreement will be void. In the present facts there is no undue influence. Rudul never agreed upon the terms of the contract under undue influence. And secondly RBI's policy states that no bank shall lend money to its customer below 10.5%. So if Poorvanchal Grameen Bank charges 11.5% it's not going against the RBI's policy.

5 Principle: Fraud is constituted by wilful expression of an untruthful statement for personal gain.

Explanation: To constitute fraud, there must be an overt step taken to mislead a person.

Facts: Wishing to make a fortune, Manny decided that only the ends matter in his pursuit of success. He was willing to go to any extent to achieve the same while climbing the ladder of success, He was once asked by Tina whether Bonny had paid the money which he was supposed to pay to him. The question got lost in conversation and Tina, without asking any further questions, deposited the money in Manny's account, as she owed the money jointly with Bonny to Manny. In a case filed by Tina against Manny accusing him of fraud,

- Tina will succeed, as there was clear fraud on the part of Manny
- Tina will not succeed, as the elements of fraud are not fulfilled
- Tina will succeed as Manny had taken the money previously from Bonny
- Tina will not succeed as she has not been defrauded, and the fault lies with Bonny for not establishing clear communication links with Tina.

Answer (b): There was no overt step taken by Manny, only an omission.

6. Facts : Mr. Aditya a shopkeeper has a shop which trades on stationary. Ms Preeti wanted to buy a blue ink pen. Aditya who believed the pen to be a blue ink one gave her a black pen. Later on Preeti finds out that it's a black ink pen. Preeti wants to avoid contract. Can she do so?

If parties to a contract get into a contract based on misrepresentation, then the contract can be avoided.

- Yes she can avoid the contract, as the consent was obtained under fraud
- No she cannot avoid the contract, as it was her duty to check the ink of the pen before leaving the shop
- Yes she can avoid the contract, as the consent was obtained under misrepresentation
- None of the above.

Answer (c): Misrepresentation simply means a misstatement. In the present case her consent was obtained on a misstatement made by Aditya, but Aditya never intentionally told this misstatement. He too believed that the ink of the pen was blue. If he did it intentionally then Aditya could have been charged under fraud.

7 Principle: Marrying someone else during the lifetime of spouse is an act of bigamy as per Hindu personal law.

Facts: Jalabi Bi got married to Chulbul on 5th November 1990. After year Chulbul deserted her on 17 December 1991. On enquiries made by her his husband was not heard for long time. Later enquiries made by Jalabi Bi and her parents proved to be futile, Jalabi Bi was led to believe that her husband has been drowned in a vessel bound for Panama. On January 15 2007 she decided to remarry. Jalabi Bi told this to her new husband Makkhi before they got married. After two years of their marriage. Chulbul returned back and sued his wife bigamy. Is she guilty?

- Jalabi Bi guilty as her act of remarrying is an offence under the Hindu personal law
- Jalabi Bi is not guilty as she made effort's to find out husband
- Jalabi Bi is not guilty as it is a case of mistake of fact
- Makkhi is guilty for the offence of adultery.

Answer (a): It is apparent from the facts that Jalabi Bi married Makkhi while Chulbul was alive and hence as per the principle Jalabi Bi is guilty of bigamy.
