

**TopYug Educations****CA FOUNDATION – BUSINESS LAWS****SUGGESTED ANSWER FOR TEST -3 (ICA – Topic 6, 7, 8 & 9)****Answer any 5 questions. Each question carries 4 marks each. Duration – 50 Mins**

1. Mr.Seth, an industrialist has been fighting a long drawn litigation with Mr.Raman, another industrialist. To support his legal campaign Mr.Seth enlists the services of Mr.X a legal expert stating that an amount of Rs.5 lakhs would be paid, if Mr. X does not take up the brief of Mr.Raman. Mr.X agrees, but at the end of the litigation Mr.Seth refuses to pay. Decide whether Mr.X can recover the amount promised by Mr.Seth under the provisions of the Indian Contract Act, 1872.

**Answer:**

**As per the provisions of The Indian Contract Act 1872**, one of the essential elements of a valid contract is that the agreement must not be the one which the law declares to be either illegal or void. A void agreement is one without any legal effect.

**As per sec 27 of the said Act**, Agreement in restraint of lawful trade, occupation or profession of any kind is void.

**In the given case**, Mr.Seth enlists the services of Mr.X and asked him not to take up the brief of Mr.Raman (the opponent) for which he agreed to pay Rs.5 Lakhs to Mr.X. Mr.X agreed for the same but after the litigation ended Mr.Seth refuses to pay.

**So, the question involved is** whether Mr.X can recover the amount promised by Mr.Seth or not.

**Applying the above provision in the given case**, we understand that this is an agreement in restraint of lawful profession which is expressly declared to be void since illegal and

**Thus** Mr. X cannot recover the amount of Rs.5 lakhs promised by Mr. Seth.

2. Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrears, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid?

**Answer:**

**Section 69 of the Indian Contract Act, 1872, provides that** "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

**In the given case**, Y has made the payment of lawful dues of X in which Y had an interest.

**Question involved is** whether X is liable to Y for the amount so paid.

**Applying the above provision in the given case**, we understand that Y, the lessee had interest in the land leased to him and thereby made the payment of arrears to Government though he was not legally bound to pay.

X is the owner who was legally bound to pay and **therefore**, Y is entitled to get the reimbursement from X.

3. 'X' agreed to become an assistant for 5 years to 'Y' who was a Doctor practising at Ludhiana. It was also agreed that during the term of agreement 'X' will not practise on his own account in Ludhiana. At the end of one year, 'X' left the assistantship of 'Y' and began to practise on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?

**Answer:**

**As per Section 27 of the Indian Contract Act 1872,** an agreement in restraint of trade/business/profession is void.

But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade. Provided the restriction imposed is reasonable.

**In the given case,** X the assistant agreed to Y, a doctor that the during the agreement of 5 years will not practice on his own account in Ludhiana and after one year, left the assistantship of Y and began his own practice.

**Question involved is** whether X could be restrained from doing so.

**Applying the above provision in the given case,** we understand that X had restrictions during the term of agreement which was for 5 years and in the absence of additional information about reasonableness, one can say restriction for a period of 5 years is unreasonable.

**And therefore** X cannot be restrained by an injunction from doing so.

4. X's estate is sold for arrears of revenue under the provisions of an act of the Legislature, by which a defaulter is prohibited from purchasing the estate. Y, upon the understanding with X, becomes the purchaser and agrees to convey the estate to X for the price which Y has paid. Referring to the provisions of the Indian Contract Act, 1872, decide whether this agreement is valid?

**Answer:**

**As per Section 23 of The Indian Contract Act 1872,** the object or consideration of an agreement is unlawful where it defeats the provisions of any law.

**According to the provisions,** the defaulter was prohibited from purchasing his own estate.

**In the given case,** X's estate is sold for arrears of revenue under an act, by which a defaulter is prohibited from purchasing the estate. Y, upon the understanding with X, becomes the purchaser and agrees to convey the estate to X for the price which Y has paid.

**Question involved is** whether this agreement is valid or not.

**Applying the above provisions in the given case,** we notice that the agreement results in an indirect purchase by the defaulter (X) and hence it defeats the Object of the law by which a defaulter is prohibited from purchasing the estate.

**And thus** the agreement is void.

5. State whether true or false with reason:
- A promise to take either rice or smuggled opium for a consideration of Rs. One thousand is wholly void.
  - An illegal contract is fatal to the main contract, but not to collateral transactions.
  - A contract of insurance is a Contingent contract and hence it is void.
  - Dowry provided voluntarily by the father of daughter is not unlawful.

**Answer:**

- a. **False:** Section 58 of the Indian Contract Act says that in the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced. Therefore, to take the rice is a legal part of the case and enforceable while the alternate part is not enforceable

due to illegality.

b. **False:** An illegal agreement is one, which has been expressly declared as the unlawful. Such an agreement is a nullity and hence cannot be enforced. When an agreement is illegal, collateral agreements to such illegal agreement are also illegal. Hence the question of their enforcement does not arise.

c. **False:** As per section 31, a contract of insurance is a contingent contract as it depends upon the happening of a specified uncertain event which is collateral to the main contract. And thus it is not void.

d. **False:** Providing Dowry is unlawful and thereby if provided voluntarily will not change the character and hence it is unlawful.

6. Point out with reasons whether the following agreements are valid or void:

- (i) Kamala promises Ramesh to lend Rs.50,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
- (ii) Ram sells the goodwill of his shop to Shyam for Rs.4,00,000 and promises not to carry on such business forever and anywhere in India.
- (iii) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceeding against each other without consent.
- (iv) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.

**Answer:**

- (i) **Void Agreement:** As per Section 23 of the Indian Contract Act, 1872 an agreement is void if the object or consideration is against the public policy.
- (ii) **Void agreement:** As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of goodwill, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
- (iii) **Void agreement:** An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.
- (iv) **Valid agreement:** An agreement with alien friend is valid, but an agreement with alien enemy is void.