**Kerala Judicial Service Mains Examination Previous Year Question Papers (Paper 2)- INDIAN CONTACT ACT, 1872**

**1)A agreed with B to conduct a liquor shop for which A advanced rupees 5 lakhs. B invested the money and carried on the business in the liquor shop for about a month, but the excise officials confiscated all the articles in the shop and prevented B from carrying on the liquid business for want of a permit from the department concerned. When A sued B for the return of the money advanced, B raised the contention that the agreement was ab initio void, how would you deal with their suit?** (20 marks)

(Question VIII (2), Kerala Judicial Services Mains Exam 2007)

ANS: In this scenario, the central issue revolves around whether the agreement between A and B is void ab initio due to its illegality. By Article 19 (1) (g) of the Indian Constitution guarantees all citizens the right to practice any profession, or to carry on any occupation, trade or business1234. However, this right is subject to reasonable restrictions imposed by the State in the interest of the general public which is mentioned in Article 19 (1)(2). By section Section 23 of The Indian Contract Act states that for a contract to be valid, there must be the legality of object and consideration. The object is the purpose for which the parties enter into a contract. The fulfillment of the object leads to the transfer of the consideration agreed from one party to the other. The section creates a limitation on the freedom of a person in relation to entering into contracts and subjects the rights of such person to the overriding considerations of public policy and the others enunciated under it.

**Illegality in Contracts**:An illegal contract is one that violates the law or public policy. Courts generally refuse to enforce such contracts.Illegality can arise in various ways:**Expressly Forbidden by Statute**: If a contract is expressly or impliedly prohibited by law, it is void. **Unlawful Purpose**: Even if the contract is capable of lawful performance, if the agreed purpose is illegal, the contract may be void. [**Knowledge of Illegality**: If a party knowingly enters into an illegal contract, it cannot seek legal remedies based on that contract](https://hallellis.co.uk/illegal-contracts-agreements/).

**Void Ab Initio**: “Ab initio” means “from the beginning.” A contract is considered void ab initio if it was never valid from its inception. Examples of situations leading to void ab initio: **Duress**: If a party is coerced or deceived into entering the contract. **Illegal Purpose**: If the contract’s purpose is illegal. **Violation of Statute**: If the contract contravenes a specific law. In such cases, both parties are released from their obligations, and the contract is treated as if it never existed.

Application to A and B’s Case: A advanced money to B for conducting a liquor shop. B carried on the business, but excise officials confiscated the articles due to lack of a permit B contends that the agreement was ab initio void.

 Purpose: The purpose of the agreement was to conduct an illegal liquor business without the necessary permit.

 Knowledge: A knew about the illegal purpose when advancing the money.

In summary, A’s claim for the return of the advanced money may not succeed, as the agreement was likely void ab initio due to its illegal purpose.

 Section 23 of the Indian Contract Act specifies that the consideration or object of an agreement is lawful unless it falls into certain categories: it is forbidden by law, would defeat the provisions of any law, is fraudulent, involves injury to another person or property, or is regarded as immoral or opposed to public policy. This section limits the freedom of individuals in entering into contracts and ensures that the consideration and object are lawful.

 Section 24 of the Indian Contract Act, 1872 states that if any part of a single consideration for one or more objects or any part of the several consideration for a single object is unlawful, the agreement is void.

**Illegality by Statute:** Statutory illegality arises in two different ways: **express:** the statute states expressly that the contract of the type agreed or provisions in it are unenforceable, or **implied:** the illegality is implied from the statute.

**Types of Statutory Illegality**: Statutory illegality can arise in at least 3 ways. For example a statute could: outlaw parties entering into a type of agreement render carrying on a particular activity or business illegal, without regulatory approval ban particular types of clauses designed to achieve a particular end or objective.

When parties nevertheless do so, the contract is usually void for illegality. The rationale is that Parliament intended to outlaw the type of agreement, and legal effect is given to that intention by courts. The legislative provision may also provide that the entire type of contract or some particular term, is unenforceable by one or other party, rather than outlaw it altogether. Also, a statute can: ban one or more parties forming or performing a contract when they have no authority to do so, or impose a penalty if they do so. When that happens, the contract is prohibited. It does not necessarily follow that the contract is void or unenforceable by both parties. It might only be enforceable by one of the parties. For one party it is enforceable, and for the other party it might be unenforceable.

**Consequences of Illegal Contracts:** The possibilities for the consequences of an illegal contract now rides on what is essentially a reasoned value judgment based on the particular circumstances of the illegality, the law that has been offended, the other factors to assess what the outcome should be. The consequences of illegality include the possibilities of:money paid under an ineffective (eg :a void) transaction may be recoverable reversing transfers of ownership of money and property; not enforcing any claim by awarding compensation; injunctions or make a declaration that would result in a profit being made to a person acting illegally ... or making orders such as those to unwind transactions to avoid that consequence no remedy being ordered in favour of either party ; declare that loans and guarantees as void contracts; severance of the terms of the contract, whereby the parts that remain constitutes an enforceable agreement. "Ab initio" is a Latin term that means "from the beginning" or "from inception." In legal documents, this term is used to indicate that a certain fact or situation has existed since the start of a relevant time period. It's often used in the context of something being void from the beginning, such as a marriage that was never legally valid. Imagine you're signing a contract, and there's a clause that says any disputes must be resolved through arbitration "ab initio." This means that, from the moment the contract is signed, any disagreements between you and the other party must be handled through arbitration, not in a court of law. Using the term "ab initio" in legal documents helps create clarity and avoid confusion. It ensures that all parties involved understand the exact timeline and circumstances surrounding a particular fact or situation.

**“Union of India v. Colonel L.S.N Murthy and Another”:** In August 1999, the Union of India invited tenders for the supply of fresh fruits for its troops from October 1, 1999, to September 30, 2000. Respondent 2 submitted a tender, which was accepted. However, on June 13, 2000, the Union of India issued a notice to Respondent 2 regarding the non-supply of fresh fruits. Respondent 2 explained the price increase of fruits and the impossibility to perform the contract due to increased prices.The arbitrator found the contract to be void ab initio due to the rates quoted by Respondent 2 being below 20% of the reasonable rates as per a government instruction. However, the court disagreed with the arbitrator’s decision. It held that the government instruction did not render the contract void because it did not constitute a “law” within the meaning of Section 23 of the Contract Act. Therefore, the contract between the Union of India and Respondent 2 was enforceable.

**The doctrine of severability** : It is a legal principle that allows a court to separate invalid provisions of a statute or contract from the valid ones, narrowing down the application of the law or agreement to only those parts that remain enforceable. This means that if any part of a law or contract is found to be unconstitutional or otherwise invalid, the remaining sections can still stand and be enforced, as long as they can operate independently.

**The blue pencil rule in contract law:** It refers to a legal doctrine that allows a court to modify or sever specific terms of a contract that are deemed unenforceable or invalid, while still enforcing the remaining parts of the agreement. This can save a contract from being voided in its entirety due to certain problematic clauses.

**"Ex turpi causa non oritur actio":**  It is a legal maxim that translates to "from a dishonorable cause an action does not arise". This principle means that a person cannot pursue legal remedies if it arises from their own illegal or immoral act. This means that if both parties are aware they are at fault, they cannot hold each other liable in a way that would allow them to benefit from their own wrongdoing. In the case of **Holman v. Johnson (1775),** the court dealt with the issue of a contract for the sale of goods that were considered illegal due to being stolen. The plaintiff, Holman, sought to recover the price paid for the stolen goods from the defendant, Johnson. The court ruled that the contract was void as it pertained to illegal activities, affirming the principle that no action can be maintained for a consideration that is illegal. As a result, Holman could not recover the money because the sale was deemed unlawful. Other relevant cases are: **Jeevanji Rao v. Mussamil, Tailor v. Chester.**

**CONCLUSION:** In this case, if the agreement between A and B was void ab initio, it means that the contract was never valid from the beginning. Since the agreement was never lawful, both parties would be released from their obligations, and A would not be entitled to the return of the money advanced. Thus, unlawful consideration and unlawful object is forbidden by law so not enforceable and no person can claim damages. Therefore, B’s contention holds, and A’s suit would likely be unsuccessful.

**2)What is the legal effect of one of the parties to a contract being a minor? What are the circumstances under which a minor becomes liable under the contract?** (8 marks) (Part III question 1 Kerala judicial service mains, exam 2009)

ANS: **Legal Effect of a Minor’s Agreement:** A minor (someone under 18 years old) has limited legal capacity to enter into contracts. From section 10 and section 11 of the Indian Contract Act, it is clear that the person who, by reason of infancy, is incompetent to contract, he cannot make a contract within the meaning of the Indian Contract Act. Consequently, a minor’s agreement is void ab initio and can not be enforced by either of the party to the contract because minor has no majority and lack soundness of mind.

* **Void Ab Initio:** A minor’s agreement is considered void ab initio, meaning it imposes no obligations on the parties. It is as if the contract never existed. Any property transferred to the minor under the contract must be returned to the party who transferred it. Only the Only the minor has the right to void the contract; the other party does not have this ability.

While a minor’s contract is generally void, there are some **exceptions** where it may be enforceable. **Necessaries:** Contracts for essential goods and services (such as food, clothing, and medical care) are typically binding on minors. These are considered “necessaries” for their well-being. **Beneficial Contracts:** If a contract benefits the minor (e.g., education, employment, or apprenticeship), it may be enforceable. However, the benefit must be reasonable and directly related to the minor’s interests. **Ratification:** After reaching the age of majority, a minor can choose to ratify a contract (i.e., accept it as valid). Ratification makes the contract legally binding from that point forward. If minor ratify the contract, the agreement becomes enforceable, and both parties must fulfil their obligations.

**Minor as a partner:**According to Section 30 of the Indian Partnership Act, 1932, a minor cannot be a partner but can be admitted into the benefits of partnership.Case laws:**In Commissioner of Income Tax v. Dwarka Das,** it was held that an agreement of partnership making a minor full-fledged partner is invalid qua all partners.**In Gurusaran Lal v. Seral Kumar,** it was held that if the guardian of a minor agrees to get a share of profits in lieu of interest on the minor’s advanced by the guardian to a partnership, the agreement is not void.

**Minor as an agent:** A minor cannot be a principal in a contract, but he can be an agent. When a minor acts as an agent, his act binds his principal and the third party to each other. A minor is not liable towards his principal, because for such a liability a person has to be competent to contract. Anyone, including a minor, can be a representative between a client and a third party. A minor cannot appoint an agent.

**Circumstances Under Which a Minor Becomes Liable:**

**Contracts for Necessities**:A contract by a minor for necessities (e.g., food, clothing, shelter, medical treatment) is binding on both parties. It aligns with the minor’s existing lifestyle. Example: A tailor supplies clothes to a minor who lacks adequate clothing. Minor is not personally liable to reimburse but he is liable only from the properties of minor.

**Beneficial Contracts of Employment**: A minor can enter into a binding contract of employment if it benefits them. However, they can repudiate it upon adulthood. Example: A minor signs an employment contract that allows them to earn a living.

**No estoppel against a minor**: A minor misrepresenting himself as a major and entering into any contract cannot be made liable for it. He can plead minority and avoid the contract at any time. The law of estoppel would not apply to him.

**Tort Liability**: Minors can be liable in tort (e.g., negligence) even if not bound by a contract.

**Emancipation**: If a minor is emancipated, they may have greater contractual capacity. Remember that while minors have limited contractual capacity, they can still engage in various legal transactions.

**3)What is the doctrine of unjust enrichment? What is a continuing guarantee? How is it revoked? what is meant by Bailee's particular Lien?** (8 marks) (part III question 39 Kerala Judicial Service mains exam 2011.)

ANS: **Doctrine of Unjust Enrichment**: The doctrine of unjust enrichment addresses situations where one party unfairly benefits at the expense of another. Sections 68 to 72 of the Indian Contract Act, 1872, deal with quasi contracts. These provisions outline situations where a contract is not explicitly made, but the law assumes a contractual obligation to prevent unjust enrichment.

Section 68: If a person enjoys a benefit or service from another party without an agreement, they are bound to pay for it unless they were already entitled to the service.

Section 69: A person who pays for a non-dischargeable debt on behalf of another can claim the amount paid from that person.

Section 70: When a person provides something to another party with the reasonable belief that payment is expected, and they have done the act without any contract, the recipient must pay for it. **Quantum meruit** is a Latin phrase that means "**as much as one has deserved**". It is an equitable remedy that provides restitution for unjust enrichment, often employed in contract law. In the context of contract law, quantum meruit implies a promise or agreement to pay a fair sum for labour and provided materials. Quantum meruit damages are awarded in an amount considered reasonable to compensate a person who has provided services in a quasi-contractual relationship.

Section 71: A person who brings goods to a carrier must ensure that they provide the relevant information; otherwise, they cannot claim the costs.

Section 72: This section explicates the obligation of a person who receives an advantage where there is no intention to provide payment. They are liable to make restitution to the party who conferred the benefit.

These sections ensure that individuals cannot unjustly benefit at the expense of others. Based on English law, it requires the unfairly benefitted person to return benefits acquired unfairly or provide compensation. The defendant is obliged by natural justice and equity to refund money or value gained unjustly. For instance, if A hires a jeweler (B) to cut and polish a rough diamond, B can retain the stone until paid for the services rendered.

**Essentials:** The defendant is enriched by an unjust benefit. The enrichment occurred at the plaintiff’s expense.The enrichment is unfair or unjust.

**Continuing Guarantee:** A continuing guarantee extends to a series of transactions rather than a single instance. Section 129 of the Indian Contract Act defines continuing guarantee. The continuing guarantee continues after the discharge of a single promise or the redemption of a single obligation. Surety can limit liability with regard to time or amount. Under this guarantee, the surety is liable for any unpaid balance at the end of the guarantee. Such a guarantee might be either prospective or retrospective. A prospective guarantee is given for future debt, whereas retrospective guarantees are given for existing debt. The surety remains liable for all transactions until explicitly revoked for future dealings. Example: If X guarantees Y’s credit line with a bank, the guarantee continues until X informs the bank otherwise.

The liability of the sureties usually continues until the principal obligation is fulfilled or until the surety is formally released from the guarantee by the creditor. A continuing guarantee contract comes to an end by the death of the Surety. It automatically stands revoked as regards to future transactions. However, the Surety’s heirs can be held liable for those transactions that were made prior to his death until contract to the contrary.

Section 179 in The Indian Contract Act, 1872 179. Pledge where pawnor has only a limited interest. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

**Lien** means the right to keep in possession, the movable goods belonging to another person, till the time the debt owed by that person is realized. It can be classified as the general lien and particular lien. When one party is entitled to retain the goods belonging to another party, until all the dues are discharged, is called general lien. In contrast, **particular lien** implies the right of retention of specific goods, until the claims related to those goods are realized.

**Revocation of Continuing Guarantee:** A continuing guarantee can be revoked by the guarantor at any time before the guarantee is invoked, typically by providing written notice to the creditor. However, it is important to note that any liabilities incurred before the revocation will still be enforceable.Revocation applies to future transactions, not past ones. The surety remains liable for transactions before revocation. Example: If X wants to stop guaranteeing Y’s loans, X notifies the bank.

**Bailee’s Particular Lien:** As per section 170 of the Indian Contract Ac, 1872, the particular lien is defined as a right of a person to retain particular goods bailed to him/her as security, for non-payment of dues. In conformity to the objective of bailment, when bailee has employed skill or labour and improved the goods bailed to him/her. He/she is entitled to consideration for his service, and if bailor denies paying the amount, then he/she can retain the goods, against remuneration. In such a case, the bailee has right of the particular lien until he/she receives compensation for the services rendered, provided the services are provided in full within the stipulated time. Moreover, the bailee has no right to sue the bailor. On the other hand, if the bailee delivers the property belonging to bailor without any consideration for the services provided, he/she can sue the bailor, and the particular lien can be waived.

**4)Under a contract A is liable to pay ₹,100000 to B. A, B and C agree that thereafter C will pay the debt instead of A. What is its legal effect and what is the principle involved in it?** (1 mark)(Question 1 Kerala Judicial Service Mains Exam 2012.)

ANS: When A, B, and C agree that C will pay the debt instead of A, it creates a **novation**. Novation occurs when the original contract is replaced by a new contract with different terms or parties. Section 62 of the Indian Contract Act, 1872, states that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. In novation, the parties must have unity of mind and unity in application. Old Contract: A’s liability to pay ₹100,000 to B. New Contract: C’s agreement to pay the debt. As a result, A’s liability is extinguished, and C becomes directly liable to B for the debt. Novation means when parties agree to substitute a new obligation for an existing one, the old obligation is discharged, and the new one takes its place. In this case, A’s liability is replaced by C’s promise to pay, altering the original contract.

Novation is of **two kinds**: Where the obligation under a contract is replaced with a new one, and Where a party is replaced by another party.

In **RS Amarnath Mehra v. Union of India**, the court observed that calling of fresh rates at a lower price will not amount to a new contract. If a contract consists of a number of terms and conditions then it does not mean that each term or condition is a separate contract. Similarly, in the case of **Ramji Dayawala & Sons (P) Ltd v. Invest Import**, the Apex Court held that a contract having a number of parts should have been assented by the contracting parties in the same manner and in the same sense, that is, it should have consensus ad idem.

**5)A, B, and C promised to perform a contract A. A and B dies. What is the rule regarding the liabilities of promisors?** (3marks) ( Part 2 question 16 Kerala Judicial Service mains examination 2013.)

ANS: Section 43 of the Indian Contract Act deals with joint and several liability. **Joint Promise**: When two or more persons make a joint promise, the promisee can, in the absence of an express agreement to the contrary, compel any one or more of the joint promisors to perform the whole promise. Each joint promisor may compel every other joint promisor to contribute equally to the performance of the promise unless the contract indicates otherwise. **Sharing of Loss:** If any joint promisor defaults in contributing, the remaining joint promisors must bear the loss arising from that default equally. The promisee can claim performance from any one or more promisors and compel contribution from the others. **Joint and Several Liability**: All joint contracts are considered joint and several. Each joint promisor is liable for the entire amount of the debt. Lack of signature or agreement by one joint promisor does not affect the enforceability against the others. Neither minority nor insolvency of one joint promisor affects the liability of the remaining promisors. **Death of a Joint Promisor**: If one joint promisor dies during a lawsuit, the suit can proceed against the other joint promisors without recording the deceased’s legal representatives. **Suit Against Joint Promisors:** The lender can sue all or any of the joint promisors as they choose, even if one of the promisors has undertaken the liability as a surety.