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Question  
No

UPSC

For  
Practice  
only

Name - Vidushi Garg

Date - 9<sup>th</sup> May, 2022

Title - DJS Mode 1 Title 2 - Civil I

- (1) In the above factual narration, the following issue arises for determination

↳ ~~Whether~~ On whom does the onus of proof lie?

Law

Section 16 of Indian Contracts Act defines the term undue influence. It states that a contract is said to be induced by undue influence when

~~the~~

pa

- ↳ there is a relationship subsisting between parties
- ↳ relation is such that one party is in position to dominate will of another
- ↳ there is use of such ~~domi~~ position to obtain unfair advantage

Clause (2) of Sec 16 lists down cases where it is deemed that position to dominate will exist. ~~and~~ -

- ↳ where the person holds real or apparent authority or shares a fiduciary relationship
- ↳ contract is with person whose mental capacity is affected by age, illness, mental or bodily distress



Further clause (3) states that where the transaction appears, on face of it or on evidence adduced to be unconscionable, the burden of proof lies on person in position to dominate will

### Case laws

In the case of Mohd Balesh v Hossaini Bibi the court laid down certain guidelines to check whether the contract is unconscionable. These were, whether -

- ↳ the contract is righteous
- ↳ the contract is improvident
- ↳ whether contract is of such nature as requires legal advisor
- ↳ whether intention of donation originated with donor



### Analysis

In the ~~above~~ present case, It is provided that the mother was old, blind and tribal woman living with B.

This prima-facies shows that there may have existed a ~~p~~ relation between parties where B could have dominated will of A's mother.

Further, B has not shown that the transfer was for any consideration.

This prima-facie gives rise to suspicion that the idea of gift might not have occurred to A's mother on her own.

It ~~seems~~ unreasonable and one sided.



[Conclusion] - Therefore, since prima facie case is made out against B - as per Sec 14(3) - the burden of proof lies on

8  
B to prove that the circumstances of undue influence did not exist.

Relate this answer to Section 111 of the Indian Evidence Act also.

(2) In the above mentioned factual narrative, the following issues arise

6  
↳ Whether price tag on garments amount to offer or merely invitation to offer.

↳ In case of invitation to offer, whether shopkeeper can refuse to sell the garment?

Law

Sec 2(o) of the Indian contract Act defines the term "proposal" (which is called offer in English law) as -

↳ One person signifies to another

↳ his willingness to do or abstain from doing anything

↳ with view of obtaining assent

Therefore, it is clear that the proposal is made with view of obtaining assent and not with view of merely further negotiations. In this regard the following case laws are important -

Harvey v Facey - where one party inquired from another the price of 'Bumper Hall' and



such other party replied to the inquiry. It was held that the reply was not with view to obtain assent but merely a negotiation. Therefore, it was a mere invitation to offer and not binding on proposer.

Therefore, it is clear that there lies a difference <sup>service</sup> b/w offer and invitation to offer and a mere invitation does not result in binding contract.

### Analysis

In the present case, the display of goods in clearance sale is with view to ~~make an offer~~ obtain an offer from customer & not ~~do an offer~~



~~Add Section 2(b) of Indian Contract Act~~

Therefore, it is upto the salesman to give final acceptance so unless salesman accepts. It is not a concluded contract and no action lies.

Similar facts were borrowed from

Pharmaceutical ~~case~~ Society of Great Britain v Boots Cash Company - where

also it was held that there is no concluded contract.

(3) In the above factual matrix the following issues arise -

~~Whether an offer made to a person restricts a party from dealing with another person?~~

~~Whether there is valid revocation?~~



Law

↳ Section 5 of Indian contract ~~act~~ states that a revocation of proposal may be made at any time before communication of its acceptance is complete as against proposer.

Section 6 further provides four modes of revocation -

- ↳ communication of notice of revocation to other party
- ↳ lapse of prescribed or reasonable time
- ↳ failure of acceptor to fulfill a condition precedent
- ↳ knowledge of insanity / death of proposer cont & immediate

It may be noted that while (1) uses the term "communication by proper to other party" & (4) uses the term "come to knowledge". The contract clearly show that legislature intended that notice of revocation has to come from party to another party & not third person.

### Analysis

In the present case, the notice of sale by A came to notice of B by third person and not by proper therefore there is no valid revocation. and accepted by A ~~to~~ creates a binding contract b/w A and B.



However, it may be noted that while A has the right to accept the offer - there is NO liability on B to for selling it to 3<sup>rd</sup> party.

An offer does not by itself create a binding oblig<sup>n</sup>.

Further, a time limit for accepting is NOT binding unless some consideration is provided for ~~to~~ reserving the item till end of time limit.

Conclusion - so there is no binding agreement b/w A and B.

Add Case laws  
Need to improve  
this answer

1) Section 13 of Hindu Marriage Act provides grounds for obtaining decree of divorce.

These ground read with other restrictions such as provided in section 14 and

Section 23 determine whether decree of divorce may be granted -

(a) After one year of marriage husband becomes impotent — *Shri Rita V. Balkrishna Nigam*

In this case, no such ground is provided under Sec 13. However,

if the marriage has not yet been consummated - it is a ground for

getting the marriage declared as void. under sec 12. But still

no "decree" of divorce may be passed



(b) Under sec. 13 (1A) - Either party

may present a petition for

~~divorce~~ decree of divorce -

(i) that there has been no resump<sup>n</sup>  
of cohabite<sup>n</sup> as b/w parties to marriage

for over 1 year since passing of decree

There is no limitation of who may  
bring to the petition.

Therefore - ~~husband~~ CAN bring

Therefore, decree of divorce CAN be  
granted.

Add S.K. Deshmukh v. Chitara  
lekha 1998



(c) There is no facts to show that any ground under Sec 13 exist.

Under 13(2)(iii) wife has been granted the right to bring a pet<sup>n</sup> of divorce if -

↳ a decree/order has been passed under Sec 25 of Code of Criminal procedure AND

↳ since passing of decree, co-habitation parties has not resumed

since 1 year or above.

BOTH condition are needed

In the present case, nor has the 1

year requirement been given, nor the

facts show that there is no co-habit<sup>n</sup>.

Therefore, no ~~decre~~ decree of divorce may be granted.



- (5) Issue: Whether hike of 10% takes the suit out of jurisdiction of Rent Controller?

[Sec 3(c) of Delhi Rent Control, ~~Authority~~

| Act 1958 | - says that the

act does not apply to any premise whose monthly rent ~~exceeds~~ <sup>exceeds</sup> 3500 rupees

~~It is noted that the sub~~

In Atma Ram properties v P, S Jain

It was held that 3500 rupees is the amount that property was actually fetching irrespective of the amount that was reaching landlord.

In the present case, the rent has not reached 3500, therefore

DRA will have jurisdiction

Issue 2: Whether widow entitled to claim  
eviction.

Section 14D - provides right to recover  
premises for her own residential use by  
widow

The conditions for the same is -

1 premises was let out  
by her or her husband

2 she requires or for her  
own residence

3 No Time limit is provided  
for the same.



In the present case, widow ~~of~~ has established that she needs it for her own residence. Because her husband's official residence is required to be vacated.

Conclusion

Therefore, X can maintain her eviction petition against Y.

- (6) Delhi Municipal Corp<sup>n</sup> (Amendment) Bill, seeks to combine the North, South & East Corp<sup>n</sup> which were earlier bifurcated in 2021.

Other features -

① caps seats of MCD

② special officer to be appointed

by centre for first meeting

③ omits provision of local bodies

*5/12*  
= Missing <sup>or</sup> various points  
Please refer model answer

7) ~~Ques~~ This question relates to sec 28  
of SRA

Sec 28 of Specific Relief Act states that  
when a suit for specific performance  
has been decreed - contract may be  
rescinded in certain circumstances. As  
per 28 these circumstances are -

*5*



↳ suit decreed for specific performance of contract of sale/lease of immov prop

↳ The purchaser or lessee does not w/o period allow pays the amount

In the present case, B was given 2 months time to make the payment which he is unable to make. Therefore condition of 2 & 1) satisfied.

He will succeed.  
Add case laws

i) Sec 12A<sup>n</sup> of ~~the~~ Commercial Courts Act provides for Pre-~~institution~~ institution mediation and settlement.

It says that except for an urgent suit which requires urgent interim relief - plaintiff has to mandatorily

exhaust pre-institution mediation:

↳ Process

↳ Application by plaintiff.

↳ process to be finished in 3 months further extendable by 2 months

↳ If   
 ↳ settlement arrived → reduce in writy + signed by parties and mediator  
 ↳ No settlement → recede back



to suit proceeding + time spent in mediation excluded under limitation

- (9) Marshalling of evidence <sup>is</sup> security <sup>is</sup> provided <sup>is</sup> under <sup>is</sup> Sec 81
- More proper <sup>Act</sup> explanation is required  
 — Time period within which mediation process has to be completed.

provided under Sec 81

If 2 or more prop mort

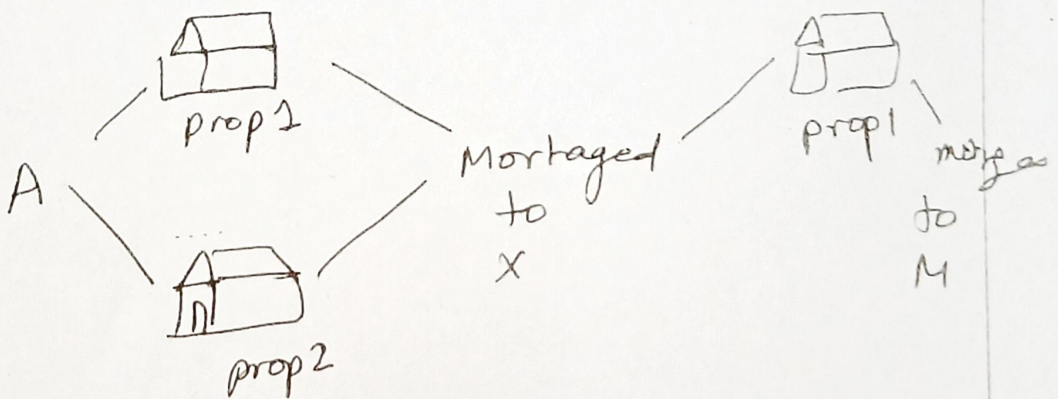
If owner of 2 or more prop mortgages them to one person, and then mortgages one or more of prop to another person → the subsequent mortgage is, in absence of contract to contrary, entitled to have prior mortgage - debt - satisfied out of

prop not mortgaged with him

### Illustration

A has 2 properties 1 and 2.

He mortgaged tenures to X, the  
further mortgaged prop 1 to M.



Now if A wants satisfy X's mortgage

→ the M can ~~say~~ demand that

property mortgaged be satisfied



out of prop 2 not mortgaged with him.

Adrich v Cooper said - that even if there no responsibility towards debtors interest. creditor must consider other creditor interest.

↑ foundation of the equitable doctrine of Marshalling.

Add Benatha v. Jedu Manikyala

### Contrib<sup>n</sup>

Sec 82 provides for contrib<sup>n</sup>

... There are 3 rules with respect to contribution

Rule 1: Where prop or share belongs to 2 or more person → then they are to contribute ratably



Rule 3 Marshalling superseded  
contribution.

(3)

Incomplete answer  
Add relevant points

Under Sec

Dower is the consideration ~~paid~~ to Muslim  
wife in a nikah.

Sec 3 of Muslim Women (Protec<sup>n</sup> of rights  
on divorce) Act, 1986 provides that a  
woman is entitled to ~~an~~ the mahr  
amount agreed to be paid to her  
at time of marriage or any other time  
as per muslim law.

~~(2) say that when a reasonable~~

If <sup>not</sup> the court can decide a  
reasonable amount as per -



↳ needs of woman  
↳ standard of life -

- (1) Vicarious liability ~~is~~ is based on the maxim "Respondet superior" and on principle that ~~is~~ he who does the act through someone is deemed to do it himself.

### Essentials

↳ master & servant or principal agent relationship

↳ act done in course of employment

↳ ~~can~~ with express / implied auth.

Cause of employment is diff from  
scope of employment

↳ include act w/ Period of  
employment

↳ w/ place where employe  
reasonably performs duty

↳ while fulfilling duty or  
engaged in some  
incidental thereto.

~~There is liability w/~~

Case law - Century Insurance Co  
Ltd v Northern Ireland -

where the driver smoked  
cigarette on petrol pump thereby  
causing fire - the act was  
held to be w/ ~~scope of~~  
∞ cause of employment



- Suggestions :-
- Add Case laws
  - Need to improve some answers
  - You have not attempted Q. no. 10 and 12. Try to manage time
  - Avoid using short forms or like (see for section Prop for Property)

Question No

and liability was made out of employer.

In another case -

where driver and conductor stopped at a dhabba for dinner and conductor started driving

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- It was held that the act was not w/o cause of

employment and therefore

~~not~~ it was not the

liability of transport company.

Please write name of the case along with citation