

Model Answer for Case law Questions in OU Semester Exam

Q1. Ravi, Shankar and Hari jointly promise to pay Madhav Rs. 6000. Now Ravi and Shankar are untraceable. Can Madhav compel Hari to pay him in full?

Answer-

This type of case law questions are answered in a FIRAC sub-headings, if you can manage to know what we need to put in these subheading and give proper analysis to the each heading you will get good marks

In FIRAC

1. F stands for Facts of the case
2. I stand for Issues or facts of the case
3. R stand for Rules
4. A stand for Analysis
5. C stand for Conclusion

So we will try to understand by answering the above question.

1. Facts given in the question

- Ravi, Shankar and Hari Jointly promised Madhav to pay Rs 6000
- Now Ravi And Shankar are untraceable

Like this you need to write the facts from the question in a simplified manner instead of writing it in a single line.

2. Issues in the case

- Can Madhav compel Hari to pay the full amount?

In the given question only one issue is there, if question is having more than two issues you need to segregate those and write in two different issue formats and answer those issues with the respective legal sections.

3. Rules of the case

Joint and Several Liability

Joint liability, several liability and joint and several liability are concepts that are all used by courts in cases where there are more than two parties to a contract. These concepts essentially establish who is responsible for what act or omission, or as in case of joint liability all promisors, will be held liable together.

If parties have joint liability, then they are each liable up to the full amount of the relevant obligation. If one party dies, disappears or is declared bankrupt, the other remains fully liable

The converse is several liability, and it arises when two or more persons make separate promises to another, under a single or different instrument.

Joint and several liability is “*liability that may be apportioned either among two or more parties or to only a few select members of the group at the adversaries discretion. Thus each liable party is individually responsible for the entire obligation, but a paying party may have a right of contribution and indemnity from non paying parties*[1].” In this two or more persons in the same instrument, promise jointly to do the same thing, and also make separate promises to do the same thing. It gives rise to one joint obligation and as many several obligations as there are joint and several promisors. As in joint liability the performance by one discharges all.

Section 43 of the Indian Contract act, 1872 states that:

“Anyone of joint promisors may be compelled to perform – when two or more persons make a joint promise, the promise may, in the absence of express agreement to the contrary, compel any such of such joint promisors to perform the whole promise.

Each promise may compel contribution – Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution – If any one of the two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.”

Section 43 entitles the promise to claim performance from anyone or more of the promisors. It also provides for a right of one or more promisors to compel contribution from the others, and the sharing loss in the event of default in contribution. These provisions though can be altered by providing the contrary in the contract.

The section makes all joint contracts joint and several. Where Debts are jointly incurred each promise is liable for the whole amount. A joint contract unenforceable against one of the joint promisors on the ground of lack of signature or his not having agreed at all, can be enforced only against the one who signed it[3]. It has also been held that neither the minority nor insolvency of one of the joint promisor affects the liability of the others.

If one of the joint promisors dies pending suit, the suit can be proceeded against the other defendant promisors without bringing his legal representatives on record

4. A stand for Analysis

Joint rights come into existence when there is a promisor and promisee, in which the promisor or promisors have jointly made a promise for a consideration jointly with two or more promisees and is binding with him/them legally by the Indian contract Act, 1872. A promisor is someone who makes a promise to a promisee against any consideration.

It's an important concept, where the responsibility is taken by either of the parties for an act or omission, especially in the case of joint liability where all the promisors are held liable together. It depends upon and includes the performance on the basis of several contracts which have to be performed and as a part of the legislative department come under the ministry of law and justice. The definition of the devolution of joint rights is more elaborately clarified in the bare act of Indian Contract Act, 1872, which is the Civil Law of India. Section 45 of the Act, deals with the joint right's which clarifies the actual meaning of the devolution of joint rights.

As per the Act, when a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between both parties during their joint lives, and after the death of any one of them, with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representative of all jointly.

Joint- promises

In many cases, there may be more than one promisor and more than one promisee. If there is more than one promisor, they are called a Joint Promisor and if there is more than one promisee, they are called Joint Promisee. All promises during their lifetime are jointly entitled to claim performance. They must jointly sue upon the promisee that refuses to join and must be added as a defendant. As per this, a person cannot be prevented from filing a suit merely because he is only a joint promisee and the other promisees have refused to join him in filing the suit.

Co-heirs of single promisee

Co-heir is one of the several individuals among whom the money is to be divided. When a promise is made with several persons jointly, then in the absence of any agreement to the contrary to a contract, all the promisee jointly have a right to claim compensation and a single promisee cannot demand for the performance of the contract alone.

Right to claim performance:

Under section 43 of the Act, the right to claim the performance is with all the promisees, even after the death of any of the promisee through his representatives and lasts with all the joint promisees. It may be basically like an obligation by one person who enters in connection with two or more persons. Here the promisee is actually liable to claim the amount he had given earlier even after the death of both persons. In such cases, it is considered by the acts of the representative of the persons. As per law the right to claim actually rests on the legal representatives of the deceased person in a joint manner, when any of the promisees dies and it remains as a part of the surviving promisees.

Discharge by one of several joint promisees

As per Section 44 of the Act, it is stated that where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from the responsibility to the other joint promisor or joint promisors. This means that even if the promisee releases one of the promisors for any reason, it doesn't mean that the other joint promisors are discharged from their responsibility to fulfill the given promise. Each one has an equal contribution towards the completion of the joint contract.

Unless a contrary intention appears

Under Section 2 (The Interpretation clause) of the Act, the words and expressions are used in the following senses, unless a contrary intention appears from the context mentioned in clause (a) to clause (j). Now here contrary intention may be shown, if the application of the defined term in the circumstances of a particular case leads to an illogical or unreasonable result or a result that is unacceptable to the essential objective of the legislative provision.

The term contrary means that it is a conflicting, illegal or is a violation against the legal regulation or a legal statute. So here we understand that unless there is such a situation where there is no contrary intention then it will not be a legal or lawful act or abstaining other than mentioned in the Contract Act.

Partners

When one or more persons share the ownership of a firm or business equally with one another are called partners. As the parties are jointly associated with any business then all the partners are jointly liable for the profit and loss in the business. Section 42 and section 43 of the Act deals with the joint and several liabilities. The joint and several liabilities are the concepts used in cases where there are one or more persons to a contract. It is necessary to find out who is responsible for any act or omission, or as in case of joint liability all promisors, who will be held liable together.

For example, as per section 42, when two or more persons have made a joint promise, then, if any one of the promisors expires even then all the remaining promisors are responsible to fulfill the promise and liable to the contract as the case may be. As per section 43, when two or more individuals make a joint promise, the promisee may in the absence of any direct agreement to the contrary, compel any one or more of such joint promisors to perform the entire promise of the contract. For example - A, B, and C jointly promise to pay D of Rs. 5000/-. D may compel either A or B or C to pay him Rs. 5000/-

Case law-

Mukundas Raja Bhagwandas & Sons vs. State Bank of Hyderabad

In this case, the Hon'ble Supreme Court held that such a decree requiring one of the joint promisees to pay in the first instance in the first instance and then to proceed against the others, was bad in law, there being no such equitable principle or statutory provision and it converted the decree to a joint and several one against all the defendants.

5. Conclusion

With the joint rights there are a number of liabilities which are considered as joint conception which are looked upon by the courts while giving any judgement in any such cases where question of rights and liability arises. Devolution of joint rights is an important ground on the legal considerations of the Contract act. It is a necessary and basic obligation and liability over the borrower to credit the amount taken prior to the demise of the promisees. It is very much necessary to bind the promisor or promisors to fulfill the contract.

There are several guidelines and case laws related to the grounds of devolution of joint rights and en-number of judgments have been given for understanding the proper ground and to further deal with such cases. The devolution of joint rights is a widespread concept and several liabilities and responsibilities lie between the persons who are involved in it.

So, it is necessary to make certain rules by which the borrowers who do not repay the money shall pay to the promises in their surviving days which were lends by the promisor as a part of the contract. It is a very strong ground and may continue to be the evolving laws on the basis of the contract of devolution of joint rights in a more established and clarified way.

In the given case after analysing the merits and case laws Madhav can compel Hari to pay full amount and at the same time Hari can take back the money from Ravi and Shankar when they are traceable to him.