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VOIDABLE CONTRACT

SECTION 2(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

SECTION 19. Voidability of agreements without free consent

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true.

EXCEPTION: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

EXPLANATION: A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practiced, or to whom such misrepresentation was made, does not render a contract voidable.

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred mounds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from encumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal the existence of the ore from A. Though A's ignorance B is enabled to buy the estate at an undervalue. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B, B dies; C having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

SECTION 64. Consequence of rescission{cancel,withdraw} of voidable contract

When a person at whose option a contract is voidable rescinds it, the other party thereto need to perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he have received any benefit there under from another party to such contract restore such benefit, so far as may be, to the person from whom it was received.

LIMITS OF RESCISSION{restriction on withdrawal} (SEC 19 & 19A)

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the misrepresentation had been true. He has an option either to avoid the contract or, alternatively, to affirm it. If the contract is affirmed, it becomes enforceable by both the parties and, if it is avoided, it becomes void as against both. Moreover, the right to cancel is subject to certain infirmities which defeat it in the following circumstances:

1. BY AFFIRMATION
   When the party, after becoming aware of his right to rescind, affirms the contract, the right of recession is lost. Affirmation may be expressed or implied. An implied affirmation takes place when he does some act inconsistent with his right to rescind, for eg, where he appropriates to his use the goods received under a voidable contract or has sold or attempted to sell them.

2. BY LAPSE OF TIME
   Recession must be claimed within reasonable time after discovering the misrepresentation.

3. INTERVENTION OF RIGHTS OF THIRD PARTIES
   The right of recession is lost as soon as a third party, acting in good faith, acquires rights in the subject matter of the contract.

MODE OF RESCISSION

The usual method of rescinding a contract is by giving a notice to the other party of the intention to rescind.

SEC 66-MODE OF COMMUNICATING OR REVOKING RESCISSION OF VOIDABLE CONTRACT-

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication of a proposal.

MISREPRESENTATION

DEFINITION

A contract the consent to which is induced by misrepresentation is voidable at the option of the deceived party. Misrepresentation means misstatement of a fact material to the contract. Misrepresentation is defined in section 18:

18 "misrepresentation" defined.- "misrepresentation" means and includes-

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
2. Any breach of duty which, without any intent to deceive, gain an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;
3. Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

TYPES OF MISREPRESENTATION

1. Unwarranted statements
   When a person positively asserts that a fact is true when his information does not warrant(justify)it to be so, though he believes it to be true, this is misrepresentation.
   A statement is said to be warranted by the information of the person making it when he receives the information from a trustworthy source. It should not be a mere hearsay.
   Where a representation acquires the status of being a term of the contract, and it turns out to be untrue, the disadvantaged party may, not only avoid but also sue for damages for breach.
2. Breach of duty
   Any breach of duty that brings an advantage to the person committing it by misleading the other to his prejudice is a misrepresentation. This clause is probably intended to meet all those cases which are called in the court of equity-cases of „constructive fraud‟, in which there is no intention to deceive, but where the circumstances are such as to make the party who derives a benefit from the transaction equally answerable in effects as if he had been actuated by motives of fraud or deceit.
3. Inducing mistake about the subject-matter
   Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing that is the subject of the agreement is also misrepresentation.
   The subject matter of every agreement is supposed by the parties to possess certain value or quality. If one of the parties leads the other, however innocently, to make a mistake as to the nature or quality of the subject matter, there is misrepresentation.

REQUIREMENTS

1. Suppression of vital facts
   Misrepresentation may also arise from suppression of vital facts. Cases of concealment or suppression will either fall under sub-section (2), when it amounts to a breach of duty or under sub-section (3) when it leads the other party to make a mistake about the subject matter of the agreement.
2. Expression of opinion of material facts

Misrepresentation should be of facts material to the contract. Mere "commendatory expression" such as men of business will habitually make about their goods are not sufficient to avoid the contract.

3. Representation of state of mind
   Representation of one‟s state of mind is also a representation of fact. The intention of the parties is very important in the matter of contracting.
4. Change of circumstances
   There is often a time gap between the representation of a fact and ultimate conclusion of the contract. Any change of circumstances in the meantime affecting the fact represented must be brought to the knowledge of the other party.
5. Inducement
   Under sec 19, a fraud or misrepresentation which did not cause the consent to a contract of the party on whom such misrepresentation was made, does not render a contract voidable.

DAMAGES FOR INNOCENT MISREPRESENTATION

A person who is the victim of a fraud is entitled to sue for damages. But the victim of an innocent misrepresentation was not allowed to recover any compensation for any loss that might have been occasioned to him by misrepresentation. However, much of the sufferings of innocent misrepresentation have now been relieved by the (English) Misrepresentation Act, 1967. The act contains the following main provisions:

1. A person, who has entered into a contract on account of a misrepresentation will have the same right to recover compensation for loss, if any, caused to him as if the misrepresentation had been made to him fraudulently. The defendant will not be liable if he had a reasonable ground to believe and did up to the time of the contract believed that the facts were true.
2. Where it is alleged in any proceeding that the contract ought to be or has been rescinded, the court may, instead, declare the contract to be subsisting and avoid damages in place of rescission, if it is equitable to do so.
3. Provisions in the contract which excluder restricts liability would be of no effect, unless they are fair and reasonable in the circumstances of the case.

FRAUD

DEFINITION

Intentional misrepresentation of facts, speaking broadly is called "fraud". According to section 17

17. Fraud defined- "fraud" means and includes any of the following acts done "with intent to deceive" or to induce a person to enter into the contract;

1. The suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true;
2. Active concealment of a fact by a person who has knowledge or belief of the fact;
3. A promise made without any intention of performing it;
4. Any other act fitted to deceive;
5. Any such act or omission as the law specially declares to be fraudulent.

TYPES OF FRAUD

1. ACTIVE CONCEALMENT

"Active concealment" is something different from mere "passive concealment". Passive concealment means mere silence as to material facts. An active concealment of a material fact is a fraud; mere silence, excepting a few cases, does not amount to fraud.

The expression "any other act fitted to deceive" naturally means any act which is done with the obvious intention of committing fraud. For example, a husband persuaded his illiterate wife to sign certain documents telling her that by them he was going to mortgage her two lands to secure his indebtedness and in fact mortgaged four lands belonging to her. This was an act done with the intentions of deceiving her.

MERE SILENCE IS NO FRAUD

Ordinarily, mere silence is no fraud, even if its result is to conceal "facts likely to affect the willingness of a person to enter into a contract". A contracting party is under no obligation to disclose the whole truth to the other party or to give the whole information in his possession affecting the subject matter of the contact. It is under this principle that a trader may keep silent about a change in prices. A seller who puts forth an unsound horse for sale, but says nothing about its quality, commits no fraud.

WHEN SILENCE IS FRAUD

A. Duty to speak (contracts *uberrima fides)*

The first such case is when the person keeping quiet is under the duty to speak. Duty to speak arises where one contracting party reposes trust and confidence in the other. An insurance company, for example, knows nothing about life or circumstances of the assured. It has to depend on the disclosure made by the assured. It is, therefore, the duty of the assured to put the insurer in possession of all he material facts affecting the risk covered.

B. Where silence is deceptive

Silence is something equivalent to speech. A person, who keeps silent, knowing that his silence is going to be deceptive, is no less guilty of fraud. Where, for example, the buyer knows more about the value of the property, which is the subject of sale, but prefers to the information from the seller, the later may void the sale.

C. Change of circumstances

Sometimes a representation is true when made, but it may, on account of a change of circumstances, become false when it is actually acted upon by the other party. In such circumstances, it is the duty of the person who made the representation to communicate the change of circumstances.

A company‟s prospectus represented that certain persons would be the directors of the company. This was true. But before the allotment took place, there were changes in the directorate, some directors having retired. That was held to be sufficient to entitle an allottee to avoid the allotment.

2 <u>HALF-TRUTHS</u>

Even when a person is under no duty to disclose a fact, he may become guilty of fraud by non-disclosure if he voluntarily discloses something and then stops half the way. A person may keep silence, but when he speaks, a duty arises to disclose the whole truth.

3 <u>PROMISE MADE WITHOUT INTENTION OF PERFORMING.</u>

To tie-up a person to a promise with no intention of performing from ones side and with the intention of only preventing the other from dealing with others, is an example of a promise made without the intention of performing it.

4 <u>ANY OTHER ACT FITTED TO DECEIVE</u>

The fourth kind of fraud identified by section 17 is any act which is fitted to deceive. The result is that all kinds of intentional cheating would be covered.

5 <u>ANY ACT OR OMISSION SPECIALLY DECLARED TO BE FRAUDULENT</u>

The fifth and the last category of frauds included in the definition of section 17 is intended to cover all such acts which under any other branch of law are regarded as fraudulent.

<u>REMEDIES OF FRAUD</u>

A contract induced by fraud is voidable at the option of the party defrauded. Until it is avoided, it is valid. The party defrauded has, however, the following remedies:

1 He can rescind the contract (section 19, para 1). Where he does so, he must act within a reasonable time. If in the interval, while he is deliberating, an innocent third party has acquired an interest in the property for value, he cannot rescind the contract.
2 He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been if the representation made had been true (section 19, para 2).
3 He can sue for damages.

WHAT IS INTERNET FRAUD?

Internet fraud is punishable by the Indian Contract Act 1872, SECTION 17

The term "Internet fraud" refers generally to any type of fraud scheme that uses one or more components of the Internet - such as chat rooms, e-mail, message boards, or Web sites - to present fraudulent solicitations to prospective victims, to conduct fraudulent transactions, or to transmit the proceeds of fraud to financial institutions or to other connected with the scheme. If you use the Internet with any frequency, you'll soon see that people and things online tend to move, as the saying goes, on "Internet time." For most people, that phrase simply means that things seem to happen more quickly on the Internet -- business decisions, information-searching, personal interactions, to name a few - and to happen before, during, or after ordinary "bricks-and-mortar" business hours.

Unfortunately, people who engage in fraud often operate in "Internet time" as well. They seek to take advantage of the Internet's unique capabilities – for example, by sending e-mail messages worldwide in seconds, or posting Web site information that is readily accessible from anywhere in the world - to carry out various types of fraudulent schemes more quickly than was possible with many fraud schemes in the past.

DISTINGUISH BETWEEN MISREPRESENTATION AND FRAUD

Similarity – Misrepresentation and fraud have many points in common. For instance both render the contract voidable (sec 19); there is false representation in both; in either case it is necessary that the consent should have been caused by misrepresentation or fraud and finally, where there is a fraud by silence, the fact that there were "means of discovering the truth by ordinary diligence", is a good defence (sec 19 exception). This is so in misrepresentation also. Damages for loss caused by innocent misrepresentation are assessed on the same principles as in the case of deliberate fraud.

Distinguish

Points	Fraud	Misrepresentation
1) Intention	Fraud is more or less an intentional wrong	Misrepresentation may be quite innocent simple
2) Effect	Fraud, in addition to rendering a contract voidable, is a cause of action in tort for damages excepting	Misrepresentation is not tort but under section 75 of the contract act, "a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfillment of the contract.
3) Discovery of truth	Fraud by silence, it does not lie in the mouth of the person committing fraud to say that his victim was to easily deceive or had the means of discovering the truth. "Fools have to be protected against knaves."	A person complaining of misrepresentation can be met with the defence that he had "the means of discovering the truth by ordinary diligence"
4) Belief	In case of fraud the person making the suggestion does not believe it to be true.	In the case of misrepresentation the person making the suggestion believes it to be true.
5) Rescission and damages.	In fraud the remedy available to the aggrieved party is not limited to rescission alone he can also claim damages.	In misrepresentation the aggrieved party can rescind the contract or sue for restitution (Sec 64) there can be no suit for damages.

CASE STUDY - 1

AIR 1963 ALL 459 FB
OFFICIAL RECEIVER, JHANSI VS JUGAL KISHORE LACHHI RAM JAINA, HYDERABAD, AND OTHERS

OFFICIAL RECEIVER, JHANSI,- APPELLENT
JUGAL KISHORE LACHHI RAM JAINA, HYDERABAD, AND OTHERS- RESPONDENTS.
JUDGES – B. KUKERJI, JAGDISH SHAI, S. N. DVIVEDI.

C at Jhansi offered to send goods to P at Jalna in Hyderabad to be sold through P. P agreed. C sent two railway receipts by post, simultaneously with a hundi of Rs 20000/- through Central bank of India to P. p on presentation of the hundi declined to pay that amount on the ground that the goods purporting to be covered by the railway receipt could not be worth more than Rs 15000/-. The Central Bank of India communicated this fact to C who directed the bank to accept Rs 15000/- which, on demand, P paid to the Jalna branch of the bank. The Jalna branch transferred that amount to the Jhansi branch, where it was credited to C"s account. In the meantime P discovered that the railway receipt did not cover any goods and direct to the Jalna branch of the bank to have the payment of Rs 15000/- paid by it to be withheld. Thereafter there was some telegraphic communication between the Jalna office and Jhansi office of the bank and the Jhansi office withheld the amount of Rs 15000/- with itself. On 27th July, 1950, the insolvency judge of Jhansi, in connection with application presented by certain creditors for adjudging C as insolvent, directed the Central Bank, not to pay that sum to anyone and to withhold the same, thereafter on 7-8-1950 a suit for a declaration that the lawful title to the sum of Rs 1500/- lying at the Jhansi branch of the bank and given by P under the hundi drawn by C vested in P and that C had no title to the same. On 30-9-1950 C was adjudged insolvent and the official receiver was also impleaded as a defendant in the suit. The official receiver alleged that the sum belonged to the estate of C and consequently claimed it to discharge the debts of C. it was also pleaded that it was open to P to file a claim in the insolvency proceedings and receive pro rata sum.

Section 19 of Indian Contract Act does not require that an agreement shall be rescinded in a particular form and all that section 66 provides for us that the recession of a voidable contract may be communicated or revoked in the same manner, and to the same rules, as apply to the communication and revocation of a proposal. The Central Bank was the agent of C and it had been informed by P that they had been defrauded and the sum of Rs 1500/- shouldn"t be withheld from C but should be paid back to them. Thus P had in effect informed the agent of C about recession of the contract on the 12th, 13th and 17th June, 1950. Consequently the contract had been rescinded by P before 27th July 1950 the date on which the insolvency judge had directed the bank to with hold payment to anyone.

When section 10 speaks of an agreement obtained by fraud to be voidable, it only means that the agreement is void only at the option of the deceived party. That section does not give any support to the defrauding party to build a title in respect of the property or money obtained by fraud. The section gave P the right either to treat the contract as void or to affirm it if he thought fit to do so. There is nothing in section 19 on the basis of which it can be contended that even though the defrauded party would have any right in the agreement.

No considerations of public policy are required in the enactment of section 19 of Indian Contract Act. It is only when the deceived party insists on the enactment of the contract by the defrauding

party then the latter can insist on his rights in the contract and not otherwise. Immediately a contract is rescinded by the defrauded party on the ground of fraud, it is rendered void ab initio.
P"s case could be supported on another reasoning also. There being no consideration for the receipt of Rs1500/-, which C obtained by fraud, it must be adjudged to be a case of constructive trust. Even assuming that neither section 86 of trust act or any other section of the act applied, the position of C could not be anything other than that of a constructive trustee. The alternative approach was not affected by the principle "that to the extent that the Indian Contract Act deals with a particular subject it is exhaustive upon the same".
Section 66 of trust act requires two things. First place the property must be transferred in the presence of a contract liable to recession, and second the transferee must be given notice to that effect by the transferer.
Both these conditions had been fulfilled in as much as C had obtained the money from P by practicing fraud and that his agent the bank had received information about recession of the contract from P in the course of the business and this was notice to C under section 229 of Indian Contract Act.
There was yet another way of looking at the case and reaching the same conclusion. It is well established that where a contract is fraudulent no property under it passes from the owner and he continues to be entitled to it.
Indian Contract Act section 72 – money paid under a contract induced by fraud can be recovered. There is no authority for the proposition that money paid under mistake induced by fraud may be recovered.

APPEAL DISMISSED.

CASE STUDY - 2

<u>CASE OF NON-DISCLOSURE</u>
CASE: AIR 1937 NAGPUR 270

HAJI YARKHAN –APPELLANT
ABDUL GANI KHAN AND ANOTHER –RESPONDENTS
JUDGE - VIVIAN BOSE, J

CASE:- SECOND APPEAL NO. 465 OF 1934,DECIDED ON 2ND SEPTEMBER 1936, FROM APPELLATE DECREE OF ADDL .DISTRICT.JUDGE,BILASPUR,D/-27 JULY 1934.

A marriage was arranged between son of Mohammedan and Mohammedan girl. The father of bridegroom conducted the negotiations on behalf of his son and some third person acted on behalf of prospective bride. The negotiations were concluded by a usual pan rusum ceremony, which did cost certain amount of father of bridegroom. Soon after, the father of the bridegroom discovered that the girl suffered from epileptic fits and so he broke off the engagement. He brought a suit for the amount spent by him over the pan rusum ceremony on the ground of non-disclosure of the defect, which it was the duty of the opposite party to disclose.

Held: that the action could not be found upon negligence in tort as the law imposed on the general duty on any one to broadcast the blemishes of his female relations. The opposite party not being charged with the intention to deceive, the action also could not be founded on deceit, and nor could it founded on fiduciary relationship. The right arose only out of contractual relationship, and their being breach of duty to disclose, the opposite party was only liable on basis of fraud under section 17, contract act. The father of the bridegroom therefore was entitled to rescind the contract but the damages claimed by him being due to its recession and not to its fulfillment, he was not entitled to damages under section 75, contract act. (p 271 c 1; p273 c 2)

B T AMLEKAR AND FIDA HUSSAIN -for appellant
A.AHMAD-for respondents
Judgment -the claim in this suit is an unusual one. A marriage was arranged between plaintiff‟s son, Mohammad Yakub khan Mt Aabi, defendant 2.the plaintiff conducted the negotiations on behalf of his son and according to him, defendant 1, Abdul Gani khan acted on behalf of the prospective bride who is his niece. The negotiations came to an end and concluded with usual pan rusum ceremony, which costs Rs. 217. Soon after, the plaintiff discovered that girl suffered epileptic fits and so he broke off the engagement.
He now sues for Rs. 217, which he spent over the pan rusum ceremony and states that he would never have consented to the engagement if he had known the girl‟s medical history. He says defendant 1 who knew the fact was under a duty to disclose it, and since he refrained from doing so, he is liable for the plaintiff‟s claim .

Decision by judge:
"I have no doubt that contract act does not purport to provide contractual remedies which the English law does not contemplate and that in cases of fraud the remedy of damages as ordinarily understood must be founded on deceit. It follows that though the plaintiff was justified in rescinding the contract, he cannot obtain the damages he claims because they did not arise through non-fulfillment of contract; and so far as an alternative claim founded on deceit is

concerned, I have already held it must fail because defendant one has not been charged with any intention to deceive and because the action is not founded on a false representation but on mere passive non-disclosure. The Decrees of the lower court are affirmed and the plaintiff"s appeal is dismissed. In view of a peculiar circumstances of this case where the trouble was arisen because defendant 1 did not fulfill an obligation imposed on him by law albeit innocently, I order each party to bear his or her own costs."

WP/PS
APPEAL DISMISSED

CASE STUDY - 3

<u>MERE SILENCE IS NO FRAUD</u>
SHRI KRISHNAN VS THE KURUKSHETRA UNIVERSITY,KURUKSHETRA (1976) ISCC311 A.I.R. 1976 SC 376.

SHRI KRISHNAN - APPELLANT
RESPONDANT: KURUKSHETRA UNIVERSITY, KURUKSHETRA
JUDGE: S. M. FAZL ALI
CIVIL APPEAL NO. 947 of 1975
D/- 17-11-1975

FACTS
Once a candidate, Shri Krishnan, did not disclose the fact of his poor attendance in the prescribed course of lectures before Law Part 2 examination. Later, when this came to the notice of the Kurukshetra University authorities they withdrew his admission. The candidate then filed a case against the University. The fact that once the candidate is allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving candidate the permission to appear. Before issuing the admission card to a student to appear at Part 1 Law examination it was the duty of the University authorities to scrutinize the admission form filled by the student inorder to find out whether it was in order. If neither the Head of Department nor the University authorities took care to scrutinize the admission form, then in not disclosing the shortage of percentage in attendance, the question of the candidate committing fraud did not arise. Similarly, when the candidate was allowed to appear at Part 2 Law examination in May1973, the University authorities had no jurisdiction to cancel the candidature for that examination. This clearly shows that the University could withdraw the certificate before the examination. It is therefore manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving candidate the permission to appear. Also the appellant was given permission on the basis of the undertaking given by him in terrom and in complete ignorance of his legal rights, that if he would not be able to get requisite permission from his employer to join law classes he would abide by any order that the University might pass.

HELD
Having gone into circumstances mentioned above, the judge was of the view that the impugned order suffers from errors of law patent on the face of record and in any event this was not the case which should have been dismissed by High Court in limine. Under the Evidence Act(1872),Sec 17, where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It is neither a case of „suggestio falsi" nor „suppressio veri". Under Evidence Act (1872) ,Sec 18,115; Any admission made in ignorance of legal rights or under duress cannot bind the maker of admission. If only the University would have exercised proper diligence and care by scrutinizing the admission form when it was sent by Head of Department to University, they could have detected the defects or infirmities. What appears to have been clear case of refusal of admission to the appellant or the cancellation of his

candidature at proper time has been completely bungled and destroyed by the inheritant inconsistency and seemingly contradictor stand by the respondent and lack of proper vigilance on the part of the Head Of Department of Law. The Head of Department of Law was also guilty of not scrutinizing the admission form of the appellant before he forwarded it to the University. The respondent was directed to declare the result of the Part 2 examination in which the appellant appeared on May 19, 1973 and also give him opportunity to appear in three subjects in which he had failed in the Part 1 examination which may be held by the University.
In the peculiar circumstances of this case, however, it was left on the parties to bear their own costs.

APPEAL ALLOWED.

CASE STUDY - 4

<u>SUPRESSION OF VITAL FACTS</u>
MITHOLAL NAYAK V. LIFE INSURANCE CORPORATION OF INDIA

MITHOLAL NAYAK – APPELLANT
LIFE INSURANCE CORPORATION OF INDIA - RESPONDENT
CIVIL APPEAL NO224 OF 1959

FACTS
Mitholal Nayak took an assignment on Oct 18, 1945 of Life Insurance Corporation on life of Mahajan Mahalal Deolal for a sum of Rs 25000. Mahajan Deolal died on 12nov, 1946.thereafter, and appellant made demand against the respondent company for a sum of Rs 26000. Thus the letter was repudiated by respondent company that Mahajan Deolal was guilty of deliberate misstatement and fraudulent where the policy holder, who had been treated a few months before he submitted the proposal for the insurance of his life with insurance company of repute for certain serious ailments as anemia, shortness of breath and asthma, not only failed to disclose in his answers to the questions put to him by the insurance company that he suffered from the ailments but he made a false statement to the effect he had not been treated by any doctor for any such serious ailments. The three conditions for the application of the insurance act (1938) second part of section 45 are

1. The statement must be on the material matter or must suppress facts, which it was material to disclose.
2. The suppression must be fraudulently made by the Policy holder.
3. The policy holder must have known at the time of making the statement that it was false or that it suppressed the facts which it was materialize to disclose.

HELD
That judged by the standard laid down in section 17, contract act, the policy holder was clearly guilty of fraudulent suppression of material facts when he made his statements, which he must have known were deliberately false and hence the policy issued to him on those statements was vitalized. Where, according to the terms of the Life Insurance Corporation policy, all money that had been paid in consequence of the policy was vitiated by reason of a fraudulent suppression of vital facts by the insured and the contract, is bad on the ground of fraud and the party who has been guilty of fraud cannot ask for the refund of money paid.
It is unnecessary to give decisions on these contentions because if Mahajan Deolal was himself guilty of fraudulent suppression of vital facts.
For the reasons given above it is concluded that there is no merit in appeal. This appeal is accordingly dismissed with costs.

APPEAL DISMISSED.