UNIT – 1: BACKGROUND

Question 1
Define Contract?

Answer
An agreement which is legally enforceable is a contract. Agreements which are not legally enforceable are not contracts but remain as void agreements or as voidable agreements which are enforceable by only one of the parties to the agreement.

Question 2
Ram invites Madhuri (a well-known film actress) to his daughter’s engagement and dinner party. Madhuri accepts the invitation and promised to attend. Ram made special arrangements for Madhuri at the party but she did not turn up. Ram enraged with Madhuri’s behaviour, wanted to sue for the loss incurred in making special arrangements. Ram is seeking your advice.

Answer
No. “Ram” cannot sue ‘Madhuri’ for his loss. Because the agreement was a kind of social nature and lacked the intention to create legal relationship.

Question 3
State with reason whether there is any contract made in the following case as per the Indian Contract Act, 1872:

“J accepts an invitation to dinner but fails to attend”

Answer
There is no contract in this case as the parties do not intend that the contract should be attended by legal consequences.

Question 4
Cash is withdrawn by the customer of a bank from the automatic teller machine is an example of:

(a) Express contract
(b) Void contract
(c) Tacit contract
(d) Illegal contract.
1.2 Business Laws, Ethics and Communication

Answer

Answer (c). Reason: Tacit Contracts are those that are inferred through the conduct of parties. Hence, this is a tacit contract.

Question 5

'All contracts are agreements, but all agreements may not be contracts'.

Answer

Correct

Question 6

Father promised to pay his son a sum of ₹ one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.

Answer

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour vs. Balfour (1912 2 KB. 571). Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of ₹ 1 lakh from father for the reasons explained above.

Question 7

Define an offer. Explain the rules of an offer. How an offer is different from an invitation to offer?

Answer

Definition: The word Proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

Rules: The following are important rules of an offer: -

♦ Must be capable of creating legal relation.
♦ Must be certain, definite and not vague.
♦ May be expressed or implied.
♦ May be general or specific.
♦ Must be communicated.
Offer and an Invitation to an offer: An offer is definite and capable of converting an intention into a contract. Where as, an invitation to an offer is only a circulation of an offer, it is an attempt to induce offerer to precede for a definite offer. Acceptance of an invitation to an offer does not result contract and only an offer emerges in the process of negotiation.

Question 8
State with reason whether there is any contract made in the following case as per the Indian Contract Act, 1872:
“J takes a seat in public bus"

Answer
As per Section 9 of the Indian Contract Act, 1872, in this case there is an implied offer to public at large by the transport company to carry passengers from one destination to another. When J takes a seat in the bus, there is an implied acceptance of the offer on his part, and there comes into existence a valid contract.

Question 9
State with reason whether there is any contract made in the following case as per the Indian Contract Act, 1872:
“J tells M that N has expressed his willingness to marry her (M)"

Answer
In the instant case, there is no contract as the essential element of communication of offer by one party and its acceptance by the other party is missing.

Question 10
State with reason whether there is any contract made in the following case as per the Indian Contract Act, 1872:
“J bids at a public auction"

Answer
Bidding at a public auction just amounts to an offer by the bidder and till it is accepted by the auctioneer by some customary method, as fall of hammer, no concluded contract comes into existence.

Question 11
State with reason whether there is any contract made in the following case as per the Indian Contract Act, 1872:
“J puts three one rupee coins in the slot of a platform ticket vending machine at the Railway Station"
Answer

In this case there comes into existence a valid contract as soon as J puts three one rupee coins in the slot of the ticket vending machine. This amounts to acceptance on the part of J, of an implied offer by the owner of the ticket vending machine.

Question 12
What is invitation to offer?

Answer

An invitation to offer is an act precedent to making an offer. It is done with intent to generally induce and negotiate. An invitation to offer gives rise to an offer after due negotiation and it cannot be per se accepted.

In an invitation to offer there is no expression of willingness by the offeror to be bound by his offer. It is only a proposal of certain terms on which he is willing to negotiate. It is not capable of being accepted as it is.

Question 13
Shambhu Dayal started “self service” system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide.

Answer

Invitation to offer

The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell. [Fisher V. Bell (1961) Q.B. 394 Pharmaceutical society of Great Britain V. Boots Cash Chemists].

Question 14
What are the circumstances under which an offer gets revoked or lapses?
Answer

An offer may come to an end by revocation, lapse, or rejection.

Revocation or lapse of offer. Section 6 deals with various modes of revocation of offer. According to it, an offer is revoked-

By communication of notice of revocation by the offeror at any time before its acceptance is complete as against him [Section 6(1)].

By lapse of time if it is not accepted within the prescribed time. If however, no time is prescribed, it lapses by the expiry of a reasonable time [Section 6(2)].

By non-fulfillment by the offeree of a condition precedent to acceptance [Section 6(3)].

By death or insanity of the offeror provided the offeree comes to know of it before acceptance [Section 6(4)].

If he accepts an offer in ignorance of the death or insanity of the offeror, the acceptance is valid. In addition to the above cases dealt with in Section 6, an offer is also revoked, if a counter-offer is made to it [U.P State Electricity Board v. Goel Electric Stores., A.I.R (1977) All. 494, 497]. Where an offer is accepted with some modification in the terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amounts to a counter-offer. An offeree agreed to accept half the quantity of goods offered by the offeror on the same terms and conditions as would have applied to the full contract. Held, there was no contract as there was counter-offer to the offer [Tinn v. Hoffman, (1873) 29 L.T. 71].

If an offer is not accepted according to the prescribed or usual mode, provided the offeror gives notice to the offeree within a reasonable time that the acceptance is not according to the prescribed or usual mode. If the offeror keeps quiet, he is deemed to have accepted the acceptance [Section 7(2)].

If the law is changed. An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal or incapable of performance. An offer can however be revoked subject to the following rules:

1. It can be revoked at any time before its acceptance is complete as against the offeror.
2. Revocation takes effect only when it is communicated to the offeree.
3. If the offeror has agreed to keep his offer open for a certain period, he can revoke it before the expiry of that period only-
   a. If the offer has in the meantime not been accepted, or
   b. If there is no consideration for keeping the offer open.

Question 15

State whether the following statement is correct or incorrect:

A specific offer can be accepted only by that person to whom offer has been made.
1.6 Business Laws, Ethics and Communication

Answer
Correct

Question 16

A sends an offer to B to sell his second-car for ₹40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week?

Answer

Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. So in the given problem, if B remains silent, it does not amount to acceptance.

The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract. (Ramsgate Victoria Hotel v Montefiore).

Question 17

Examine what is the legal position, as to the following:

(i) M offered to sell his land to N for ₹28,000/-. N replied purporting to accept the offer and enclosed a cheque for ₹8,000/-. He also promised to pay the balance of ₹20,000/- in monthly installments of ₹5,000/- each.

(ii) A offered to sell his house to B for ₹10000/-. B replied that he can accept the house for only ₹8,000/-. A rejected B's counter offer to buy the house for ₹8,000/-. B later changed his mind and is now willing to buy the house for ₹10,000/-.

Answer

To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. With the above rules in mind, we may note that the following is the solution to the given problems:

(i) It is not a valid acceptance and no contract can come into being. In fact this problem is similar to the facts of Neale vs. Merret [1930] W.N 189, where M offered to sell his land to N for ₹28,000/-. N replied purporting to accept the offer but enclosed a cheque for ₹8,000/- only. He promised to pay the balance of ₹20,000 by monthly installments of
The Indian Contract Act, 1872

The Indian Contract Act, 1872

5,000. It was held that N could not enforce his acceptance because it was not an unqualified one.

(ii) This problem is similar to the facts of Union of India v. Bahulal (AIR 1968 Bombay 294) case, wherein A offered to sell his house to B for ₹ 10,000/-, to which B replied that, “I can pay ₹ 8,000 for it”. Consequently, the offer of ‘A’ is rejected by ‘B’ as the acceptance is not unqualified. But when B later changes his mind and is prepared to pay ₹ 10,000/-, it becomes a counter offer and it is up to A whether to accept it or not.

Question 18

Explain in brief the rules relating to ‘Acceptance’ of an offer under the provisions of the Indian Contract Act, 1872.

Answer

Following are the general rules regarding acceptance under the Indian Contract Act, 1872.

(i) Acceptance must be absolute and unqualified. As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified or unconditional.

(ii) Acceptance must be in the prescribed manner. If the offer is not accepted in the prescribed manner, then the offeror may reject the acceptance within a reasonable time.

(iii) Acceptance must be communicated to the offeror. If acceptance is communicated to the person, other than the offeror, it will not create any legal relationship. Thus, to conclude a contract between the parties, the acceptance must be communicated in some perceptible form.

(iv) Acceptance must be given by the party to whom the offer is made.

(v) Acceptance must be given within the prescribed time or within a reasonable time.

(vi) Acceptance cannot be given before communication of an offer

(vii) Acceptance must be made before the offer lapses or is withdrawn.

(viii) Acceptance must show intention to fulfill the promise.

(ix) Acceptance cannot be presumed from silence

(x) Acceptance by conduct/performance of condition: Acceptance may also be by performance of some condition/act as required by the Offeror.

Question 19

X offered to sell his house to Y for ₹ 50,000. Y accepted the offer by E-mail. On the next day Y sent a fax revoking the acceptance which reached X before the E-mail. Is the revocation of acceptance valid? Would it make any difference if both the E-mail of acceptance and the fax of revocation of acceptance reach X at the same time?
Answer

Yes, the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. If the letter of acceptance (E-mail) and the Fax of revocation of acceptance reach X at the same time, the formation of contract will depend on the fact that which of the two is opened first by X. If X reads the Fax letter first, revocation is valid but if he reads the E-mail first, revocation is not possible.

Question 20

State whether the following statements are correct or incorrect:

A proposal may be revoked by the proposer before the posting of the letter of acceptance by the acceptor.

Answer

A proposal may be revoked by the proposer before the posting of the letter of acceptance by the acceptor. This statement is correct.

Question 21

Mr. U offered to sell his house to Mr. X for ₹15,00,000. Mr. X accepted the offer by post. On the very next day Mr. X sent a telegram revoking the acceptance which reached Mr. U before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. U at the same time?

Answer

Communication and revocation of acceptance when complete: The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions

(i) Yes, the revocation of acceptance by Mr. X (the acceptor) is valid.

(ii) If Mr. U opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.
Exercise

1. A father and daughter agrees to go for a morning walk every day. Is there any agreement in the following case?
   [Hint: No, it is a social agreement]

2. X offers to donate ₹ 5,000 to an orphanage. The orphanage accepts the offer. Can it recover the amount?
   [Hint: No, as the agreement is without consideration and hence void]

3. A sends his servant to trace his missing nephew. In the mean time A announced a reward of ₹ 1,000 who traces his nephew. The servants traces the nephew. Can servant claim for the reward?
   [Hint: No, as communication of offer was not there]

4. Though a void contract is valid when it is made, subsequently it becomes unenforceable. Why?
   [Hint: Because of subsequent illegality]

5. A voidable contract is voidable at the option of the aggrieved party and remains valid until rescinded by him. Is it correct?
   [Hint: Yes]

6. There is a contract to commit crime, what type of contract is this?
   [Hint: Illegal Contract]

7. When in a contract due to technical defects, one or both the parties cannot sue upon it, the contract is called
   [Hint: Unenforceable contract]
UNIT – 2: CONSIDERATION

Question 1

*Explain the term ‘Consideration’?*

**Answer**

The expression ‘consideration’ has to be understood as a price paid for an obligation. In *curie vs misa 1875 10 Ex 130* is was held (in UK) that consideration is “some right, interest, profit or benefit accruing to one party or forbearance, detriment, loss, or responsibility given, suffered or under taken by the other”. The judgment thus refers to the position of both the promisor, and the promisee in an agreement.

Section 2 (d) of the Indian Contract Act, 1872 defines consideration as “when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise”.

Question 2

*Whether gratuitous promise can be enforced?*

**Answer**

The word ‘gratuitous’ means ‘free of cost’ or ‘without expecting any return’. It can therefore be inferred that a gratuitous promise will not result in an agreement in the absence of consideration. For instance a promise to subscribe to a charitable cause cannot be enforced.

Question 3

*State whether the following contract can be enforced.*

“Where an orphanage wishes to enforce a promise made by a philanthropist to donate a specified sum”.

**Answer**

A gratuitous promise such as a promise to donate money lacks consideration and cannot be enforced.

Question 4

*Mr. Singh, an old man, by a registered deed of gift, granted certain landed property to A, his daughter. By the terms of the deed, it was stipulated that an annuity of ₹ 2, 000 should be paid every year to B, who was the brother of Mr. Singh. On the same day A made a promise to B and executed in his favour an agreement to give effect to the stipulation. A failed to pay the stipulated sum. In an action against her by B, she contended that since B had not furnished any consideration, he has no right of action.*
Examing the provisions of the Indian Contract Act, 1872, decide, whether the contention of A is valid?

Answer

Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d) ".... the promisee or any other person......", it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the Chinnaya Vs. Ramayya (1882) 4 Mad 137., held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Singh has entered into a contract with A, but Mr. B has not given any consideration to A but the consideration did flow from Mr. Singh to A and such consideration from third party is sufficient to the enforce the promise of A, the daughter, to pay an annuity to B. Further the deed of gift and the promise made by A to B to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it.

Question 5

Comment on 'To form a valid contract, consideration must be adequate'.

Answer

The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (Bolton v. Modden). Consideration must however, be something to which the law attaches value though it need not be a equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Question 6

X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay a sum of ₹ 5,000 per month to N (the sister of the
executor). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N.

Answer

As per Section 2 (d) of the Indian Contract Act, 1872, in India, it is not necessary that consideration must be supplied by the party, it may be supplied by any other person including a stranger to the transaction.

The problem is based on a case "Chinnaya Vs. Ramayya" in which the Court clearly observed that the consideration need not necessarily move from the party itself, it may move from any person. In the given problem, the same reason applies. Hence, M is liable to pay the said sum to N and cannot deny her liability on the ground that consideration did not move from N.

Question 7

State whether the following contract can be enforced.

Where there is a family settlement in writing and a family member who is not a party to the settlement wishes to enforce his claim.

Answer

As per the judgment in Shuppu Vs Subramanian 33 Mad. 238, a family settlement in writing, may be enforced by a member of the family who was not a party to the settlement.

Question 8

State whether the following contract can be enforced.

"An agreement to create an agency, in which consideration is absent."

Answer

According to Section 185, of the Indian Contract Act, 1872 an agreement creating an agency though devoid of consideration, is valid and can be enforced.

Question 9

What do you understand by the term 'Consideration'? Are there any circumstances under which a contract, under the provisions of the Indian Contract Act, 1872, without consideration is valid? Explain.

Answer

Meaning of consideration: The expression 'consideration' in general means price paid for an obligation. According to Section 2 (d) of the Indian Contract Act, 1872 when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Thus, on analyzing the above
The Indian Contract Act, 1872 1.13

definition, the following ingredients are essential in understanding the meaning of the term consideration:-

(i) An act i.e. doing something
(ii) An abstinence or forbearance i.e. abstaining or refraining from doing something, and
(iii) A return promise.

The general rule is that an agreement made without consideration is void. Sections 25 and 185 of the Indian Contract Act, 1872, provide for exceptions to this rule where an agreement without consideration is valid. These are:

(1) Love & Affection [Section 25 (1)]
Where an agreement is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between the parties standing in near relation to each other, the agreement is enforceable, even through, the consideration is absent.

(2) Compensation for voluntary service [Section 25 (2)]
A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promissor, is enforceable even without consideration.

(3) Promise to pay, a time – barred Debt [Section 25 (3)]
The agreement is valid provided it is made in writing and is signed by the debtor or by his agent authorized in that behalf.

(4) Completed Gift – [Explanation 1 to Section 25]
As per explanation 1 to section 25, nothing in section 25 shall affect the validity as between donor and donee, on any gift actually made.

(5) Agency (Section 185)
No consideration is necessary to create an agency.

Exercise

1. A fire broke out in X’s house. He offered to pay an amount of ₹ 5,000 to anyone who brought out his trapped son Y safe. A fireman brought out Y alive. Is X bound to pay?
[Hint: Yes, the fireman had done more than what his official duty demanded]

2. R owed to M ₹ 5,000. The debt was barred by the Limitation Act. R signed a written promise to pay ₹ 2,000 to M on account of this debt. Can M claim it?
[Hint: Yes, as per Section 25(3) of the Indian Contract Act, 1872]

3. R gave his property to his uncle in return of her promise that she would pay ₹ 2000 P.M. to her uncle all his life. Later, she refused to pay. Can uncle recover money from him?
1.14 Business Laws, Ethics and Communication

4. Study the following example and answer the questions.
   (i) A promises to sell his house to B for ₹ 5,00,000/- Here who is the promisor and who is the promisee?
   (ii) B agrees to buy a house from A for ₹ 5,00,000/- Here who is the promisor and who is the promisee?

   [Hints: (i) A (Promisor), B (Promisee)], (ii) B (Promisor), A (Promisee)]

5. A pays ₹ 5000/- requesting B to deliver certain quantity of rice to which B agrees. What is the
   position of consideration as “executed” or “executory” regarding A and B?

   [Hints: For ‘A’ executed & for ‘B’ executory]

6. While a third party to consideration can sue, a third party to a contract cannot sue. In the case of family settlement, if the terms of settlement are reduced in writing, members of the family who were not a party to the settlement can also enforce the claim. Is it correct?

   [Hints: Yes, it is an exception given under Para 1.11 of the study module]

7. Should consideration be adequate to the value of the promise?

   [Hints: No, as per the Para 1.10 point (v) of the study module]
UNIT – 3 : OTHER ESSENTIAL ELEMENTS OF A CONTRACT

Question 1

A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination. Accordingly the car was sold. However, the father of the student persuaded him to sue his teacher. State whether the student can sue the teacher?

Answer

Yes, A can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

Question 2

Discuss briefly the position of a minor with regard to the contracts entered into by him.

Answer

Position of a minor: A minor is a person who has not completed eighteen years of age. The Contract Act puts minor in a different position as compared to others which may be discussed as under:

(i) A contract by a minor is altogether void. *(Mohiri Bibi vs. Dharmodas Ghose).* A minor is incapable of giving a promise imposing a legal obligation.

(ii) A minor can be a promisee or a beneficiary. He can hold other parties liable for the performance of their promise.

(iii) A minor cannot be a partner in a firm. However, be may be admitted to the benefits of partnership with the consent of all the partners.

(iv) There is no estoppel against the minor. He can always plead minority in a suit attempting to hold him liable, no matter he might have earlier misrepresented himself to be major in age.

(v) A minor cannot ratify contracts which he might have made during minority, after becoming major.

(vi) A minor's agreement being void cannot be specifically enforced. However, the estate of a minor can be held liable for the necessities supplied to him or to his dependents suited to his status in life.

(vii) Though the agreement of a minor is void, his guardian can, under certain circumstances and for the benefit of minor, enter into contracts.

(viii) A minor can be an agent, but not a principal.
(ix) A minor can hold property, fully paid shares and can seek contracts of employment or apprenticeship.

(x) The principle of restitution does not apply against a minor.

(xi) A person giving guarantee for a minor debtor can be held liable as surety on the default of the minor.

(xii) A minor can never be adjudicated insolvent.

Question 3

State with reason whether the following statement is correct or incorrect:

‘An agreement entered into with a minor may be ratified on his attaining majority’.

Answer

Incorrect. In accordance with the provisions of the Indian Contract Act, 1872 as contained in Section 11, “every person is competent to contract who is of the age of majority ………..” Accordingly, a person who is minor is incompetent to contract. The law declares that an agreement entered into with a minor is void. As a minor’s agreement is void ab initio, he cannot validate it by ratification on attaining his majority. Ratification in law is treated as equivalent to a validation of previous authority, and it follows that, as a general rule, a person or body of persons, not competent to authorize an act, can not give it validity by ratifying it. Of course, such a person (minor) can enter into a fresh agreement, but the earlier amount received cannot be treated as consideration for the new agreement. (Relevant cases on this point are Mohiri Bibi vs. D.D. Ghosh and Nazir Ahmed vs. Jeevandas).

Question 4

State with reason whether the following statement is correct or incorrect.

‘A promissory note duly executed in favour of minor is void’.

Answer

Incorrect: As per the Indian Contract Act, 1872, minor is not competent to contract, but he can be a beneficiary. In this case, the minor is a beneficiary. Hence the Promissory Note is not void and the minor at his option can enforce it.

Question 5

Choose the correct answer from the following:

Which one of the following statements is not true about minor’s position in the firm:

(a) He can not become a partner in the firm.

(b) A minor and a major can enter into an agreement of partnership.

(c) He can be admitted to the benefits in the firm.

(d) He can become a partner on becoming a major.
The Indian Contract Act, 1872

Answer

(b) A minor and a major can enter into an agreement of partnership.

Question 6

‘An agreement with an alien friend is valid but an agreement with an alien enemy is void’.

Answer

(i) Correct

Question 7

Ramesh, aged 16 years, was studying in an engineering college. On 1 March, 2011 he took a loan of ₹1 lakh from Suresh for the payment of his college fee and agreed to pay by 30th May, 2012. Ramesh possesses assets worth ₹10 lakhs. On due date Ramesh fails to pay back the loan to Suresh. Suresh now wants to recover the loan from Ramesh out of his assets. Whether Suresh would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

Answer

According to Section 11 of the Indian Contract Act, 1872, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus Ramesh who is a minor is incompetent to contract and any agreement with him is void [Mohori Bibi Vs Dharmodas Ghose 1903, 30 Cal, 539 (PC)]. Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor’s property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity. Thus, according to the above provision, Suresh will be entitled to recover the amount of loan given to Ramesh for payment of the college fees from the property of the minor.

Question 8

What do you understand by “coercion” and “undue influence” under the provisions of the Indian Contract Act, 1872? What are the differences between them?

Answer

Coercion and Undue Influence – Meaning and Differences: “Coercion” is the committing, or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. (Section 15, The Indian Contract Act, 1872).
A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other. A person is deemed to be in a position to dominate the will of the other, when he holds authority, real or apparent over the other, or when he stands in a fiduciary relation to other (Section 16, The Indian Contract Act, 1872)

**Differences between Coercion and Undue Influence**

Nature of action: Coercion involves physical force and sometimes only threat. Undue influence involves only moral pressure.

Involvement of criminal action: Coercion involves committing or threatening to commit any act prohibited or forbidden by law, or detention or threatening to detain a person or property. In undue influence there is no such illegal act involved.

Relationship between parties: In coercion there need not be any relationship between parties; whereas in undue influence, there must be some kind of relationship between parties, which enables to exercise undue influence over the other.

Exercise by whom: Coercion need not proceed from the promisor. It also need not be directed against the promisee. Undue influence is always exercised by one on the other, both of whom are parties to a contract.

Enforceability: Where there is coercion, the contract is voidable at the option of the party whose consent has been obtained by coercion. Where there is undue influence the contract is voidable or court may set it aside or enforce it in a modified form.

Position of benefits received: In case of coercion, where the contract is rescinded by the aggrieved party any benefit received has to be restored back. In the case of undue influence, the court has discretion to pass orders for return of any such benefit or not to give any such directions.

**Question 9**

*What is meant by ‘Undue Influence’? ‘A’ applies to a banker for a loan at a time where there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. Whether the contract is induced by undue influence? Decide.*

**Answer**

*Meaning of Undue Influence: Section 16 of the Indian Contract Act, 1872, states that a contract is said to be induced by undue influence where the relations subsisting between the parties are such that the parties are in a position to dominate the will of the other and used that position to obtain an unfair advantage over the other.*
A person is deemed to be in that position:

(a) where he holds real or apparent authority over the other or stands in a fiduciary relation to him;

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of old age, illness or mental or bodily distress.

(c) where a man who is in position to dominate the will of the other enters into contract with him and the transaction appears to be unconscionable, the burden of proving that it is fair, is on him, who is in such a position.

When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence [section 16(3)]. Every transaction where the terms are to the disadvantage of one of the parties need not necessarily be considered to be unconscionable. If the contract is to the advantage of one of the parties but the same has been made in the ordinary course of business the presumption of under influence would not be raised.

In the given problem, A applies to the banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence. As between parties on an equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of the borrower, the relief is granted on the ground of undue influence. But this is not the situation in this problem, and therefore, there is no undue influence.

**Question 10**

*Do the following statements amount to involvement of fraud?*

(i) Where the vendor of a piece of land told a prospective purchaser that, in his opinion, the land can support 2000 heads of sheep whereas, in truth, the land could support only 1500 sheep.

(ii) X bought shares in a company on the faith of a prospectus which contained an untrue statement that one Z was a director of the company. X had never heard of Z and the untrue statement of Z being a director was immaterial from his point of view. Can X claim damages on grounds of fraud?

**Answer**

(i) The problem is based on the facts of the case *Bisset vs Wilkinson* (1927). In the given problem the vendor says that in his opinion the land could support 2000 heads of sheep. This statement is only an opinion and not a representation and hence cannot amount to fraud.
(iii) The problem is based on the facts of the case Smith vs Chadwick (1884). In the problem though the prospectus contains an untrue statement that untrue statement was not the one that induced X to purchase the shares. Hence X cannot claim damages.

Question 11

Explain the concept of 'misrepresentation' in matters of contract. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons.

Answer

Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is present:

1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale [Long v. Lloyd, (1958)].

Question 12

M purchased a wrist watch from N, both believed that it was made with gold plaque. Hence, M paid a very high price for that. Later it was found that the wrist watch was not made so. State the validity of the contract.

Answer

The contract is absolutely void as there is a mutual mistake of both parties. In case of bilateral mistake of essential fact, the agreement is void ab-initio, as per Section 20 of the Indian Contract Act, 1872.

Question 13

X buys from Y a painting which both believe to be the work of an old master and for which X pays a high price. The painting turns out to be only a modern copy. Discuss the validity of the contract?
Answer

The contract is absolutely void as there is a mutual mistake of both the parties as to the substance or quality of the subject-matter going to be the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab initio, as per section 20 of the Indian Contract Act, 1872.

Question 14

Choose the correct answer from the following and give reason.

Where both the parties to an agreement are under mistake as to a matter of fact, which is essential to the agreement, the agreement is:

(a) Valid  (b) Voidable  
(c) Void  (d) Illegal.

Answer (c) Reason: If both the parties to an agreement are under a mistake (i.e. the mistake is bilateral) regarding a matter of fact, which is essential to the agreement, the agreement is void (Couturiers Vs. Hasite).

Question 15

Point out with reason whether the following agreements are valid or void:

(i) Kamala promises Ramesh to lend ₹ 50,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
(ii) Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
(iii) Ram sells the goodwill of his shop to Shyam for ₹ 4,00,000 and promises not to carry on such business forever and anywhere in India.
(iv) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.
(v) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.

Answer

Validity of agreements

(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 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.

(iii) 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 good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
(iv) **Void Agreement:** An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

(v) **Valid Agreement:** An agreement with alien friend is valid, but an agreement with alien enemy is void.

**Question 16**

*Explain the validity of agreements in restraint of trade.*

**Answer**

An agreement which interferes with the liberty of a person to engage himself in any lawful trade, profession or vocation is called ‘an agreement in restraint of trade’. Section 27 of the Indian Contract Act, 1872 renders agreement in restraint of trade as void. The section applies even when the restraint is for a limited period only or is confined to a particular area. But contracts by which in the exercise of his profession, trade or business, a person enters into ordinary agreements with persons dealing with him which are really necessary for the carrying on of his business are not void under this section.

The exceptional cases which constitutes the valid contracts in restraint of trade are as follow:

1. **Sale of goodwill:** Restrain on a seller of goodwill from carrying on (i) a similar business, (ii) with in specified local limits, (iii) so long as the buyer or his representative deriving title to the goodwill carriers on a like business, Provided (iv) the restraint is reasonable in point of time and place.

2. **Partner’s agreements:**
   - (i) Partners may enter into an agreement that a partner will not carry on similar business while he is partner.
   - (ii) An outgoing retiring partner may agree with other partners that he will not carry on any business similar to that of the firm within a specified time or local limits.
   - (iii) Upon or in anticipation of dissolution a partnership firm some or all the partners may agree not to carry on a business similar to that of the firm with a specified period or local limit.
   - (iv) A partner may upon the sale of goodwill of the firm, make an agreement with the buyer that he will not carry on any similar business within specified time or local limits.

3. **Service agreement:** Agreements of service often contain a clause by which the employees prohibited from working anywhere else during the term of the agreement, such agreement are valid

4. **Trade Combinations:** An agreement among members of trade associations or chambers of commerce etc. to regulate their business is not void under section 27.

**Question 17**

*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 ₹ 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

The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void. A void agreement is one without any legal effect. Thus any agreement in restraint of trade, marriage, legal proceedings etc., are void agreements. Thus Mr. X cannot recover the amount of ₹ 5 lakhs promised by Mr. Seth because it is an illegal agreement and cannot be enforced by law.

Question 18

‘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

An agreement in restraint of trade/business/profession is void under Section 27 of the Indian Contract Act, 1872. 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. Therefore X can be restrained by an injunction from practicing on his own account in Ludhiana.

Question 19

Pick out the correct answer from the following and give reason:

An agreement to subscribe to or contribute a plate or prize of the value of ₹ 500 or above to be awarded to the winner of a horse race is

(1) Void
(2) Valid
(3) Illegal
(4) Unenforceable

Answer

Valid: According to the exception stated under Section 30 of the Indian Contract Act, 1872, a subscription, or contribution or agreement to subscribe or contribute, made or entered into for or towards any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner of any horse race, shall not be deemed to be unlawful.
Question 20

Pick out the correct answer from the following and give reason:

X sells the goodwill of his retail store to Y for ₹ 5 lac and promises not to carry on the same business forever and anywhere in India. Is the agreement:

1. Valid
2. Void
3. Voidable
4. Illegal.

Answer

Void: As per Section 27 of the Indian Contract Act, 1872, an agreement in restraint trade is void. However, a buyer can put such a condition on the seller of goodwill not carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.

Question 21

M promised to pay N for his services at his (M) sole discretion found to be fair and reasonable. However, N dissatisfied with the payment made by M and wanted to sue him. Decide whether N can sue M under the provisions of the Indian Contract Act, 1872?

Answer

N’s suit will not be valid because the performance of a promise is contingent upon the mere will and pleasure of the promisor; hence, there is no contract. As per section 29 of the Indian Contract Act, 1872 – agreements, the meaning of which is not certain, or capable of being made certain, are void*.

Question 22

State whether the following statements are correct or incorrect:

The agreement towards compounding of an, offence to avoid prosecution is void.

Answer

Incorrect

Exercise

1. A student was induced by his teacher to sell his brand new car to the latter at less than the purchase price to secure more marks in the examination. Accordingly the car was sold. However, the father of the student persuaded him to sue his teacher. Can student sue the teacher?

   [Hint: Yes, the student can sue his teacher on the ground of undue influence.]

2. A and B enter into a contract believing wrongly that a particular debt is not barred by law of limitation. Is this a valid contract?
3. ‘A’ & ‘B’ are partners in a firm. They agree to defraud a Government department by submitting a tender in the individual name and not in the firm name. Is this a valid agreement?

[Hint: No, it is a void agreement as it is a fraud on the Government department].

4. An old man with poor eyesight endorsed a bill of exchange thinking it to be a mere guarantee. Is the old man liable under the bill?

[Hint: No, because there is a unilateral mistake about a fundamental matter by oldman]

5. ‘P’ advanced money to ‘D’ a married woman to enable her to obtain a divorce from her husband. She also promised to marry him after divorce. Is P entitled to recover the amount in case of breach of his promise.

[Hint: P was not entitled to recover the amount from D as the agreement was against good morals]

6. Two persons refer to a ship and refer to it in the contract but each of them had a different ship in mind though of the same name. Whether it will be valid and why?

[Hint: No, no identity of mind]

7. ‘A’ agrees to pay ₹ 100 to ‘B’ on ‘B’ stealing the purse of ‘C’. ‘B’ manages to steal the purse of ‘C’ and ‘A’ does not fulfill his promise. Whether court can compel ‘A’ to pay ‘B’ ₹ 100?

[Hints: No, because contract is illegal]
Question 1

A received certain goods from B promising to pay ₹ 10,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays ₹ 6000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of ₹ 10000/-. Can B do so? Advise.

Answer

As per section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

Therefore B can sue A only for ₹ 4000.

Question 2

Pick out the correct answer from the following and give reason:

A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract:

(1) can be enforced by A’s representative
(2) can be enforced by B
(3) can be enforced either by A’s representative or by B
(4) cannot be enforced either by A’s representative or by B

Answer

Correct answer is option (4): The Contract cannot be enforced either by A’s representative or by B. To paint a picture is a personal contract and may be performed only personally. A personal contract cannot be performed by anybody other than the promisee. Hence, if A dies, the contract cannot be enforced.

Question 3

X, Y and Z jointly borrowed ₹ 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

(i) Y can recover the contribution from X and Z,
(ii) Legal representatives of X are liable in case of death of X,
(iii) Y can recover the contribution from the assets, in case Z becomes insolvent.
Answer

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

(i) Y can recover the contribution from X and Z because XYZ are joint promisors.

(ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.

(iii) 'Y' also can recover the contribution from Z's assets.

Question 4

Explain the law relating to liability of joint promisors in a contract. ‘D’, ‘E’ and ‘F’ who are partners in a firm, jointly promised to pay ₹ 1,50,000/- to ‘A’. Later-on, ‘F’ became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt. ‘A’ recovers the whole amount from ‘D’ through a legal action. Decide, under the provisions of the Indian Contract Act, 1872 the extent to which ‘D’ can recover the amount from ‘E’.

OR

‘A’, ‘B’ and ‘C’ are partners in a firm. They jointly promise to pay ₹ 1,50,000 to ‘P’. C became insolvent and his private assets are sufficient to pay only 1/5 of his share of debts. A is compelled to pay the whole amount to P. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which A can recover the amount from B.

Answer

The legal liability of a joint promisor, joint promisee and other connected issues are set out in Sections 42, 43 and 44 of the Indian Contract Act, 1872. In terms of section 42 of the Act “When two or more persons have made a joint promise then unless a contrary intention appears from the contract, all such persons, during their joint lives, and after the death of any
one of them, his representative jointly with the survivor or survivors and after the death of the last survivor, representatives of all jointly must fulfill the promise”.

Further, the promisee can enforce his right against any one of the joint promisor and if he does so then the rights and duties of the other promisors is to make contributions. In terms of section 43 of the Act, (i) when two or more persons make joint promise, the promisee can compel any one of the joint promisors to perform the whole of promise. (ii) in the above situation, the performing promisor can enforce contribution from other joint promisors, in the absence of express agreement to the contrary.

Section 44 of the Act, states that in the matter of release of one of the joint promisors, it must be understood that such a release does not discharge other joint promisors nor does the released joint promisor would stand released to other joint promisor or promisors.

Hence, in the instant case, D, E and F who are partners in a firm, jointly promised to pay ₹ 1,50,000/- to A. Later on, F became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt i.e. ₹ 10,000/- (1/5th of ₹ 50,000/-) (Amount to be contributed by F is ₹ 50,000/- (1/3rd of ₹ 1,50,000/-). A recovers the whole amount from D through a legal action.

Here, D is entitled to receive
(a) From F’s assets: ₹ 10,000/-
(b) From E: ₹ 70,000/- (₹ 50,000/- being his own share + ½ (50,000 – 10,000) i.e. ₹ 20,000/- being one half share of total loss of ₹ 40,000/- due to F’s insolvency).

Thus, in the above case, under the provisions of the Indian Contract Act, 1872, D can recover ₹ 70,000/- from E.

Question 5
Ajay, Vijay and Sanjay are partners of software business and jointly promises to pay ₹ 60,000 to Kartik. Over a period of time Vijay became insolvent, but his assets are sufficient to pay one-fourth of his debts. Sanjay is compelled to pay the whole. Decide whether Sanjay is required to pay whole amount himself to Kartik in discharging joint promise.

Answer
According Section 43 of the Indian Contract Act, 1872 when two or more persons make a joint promise, the promisee may, in absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. Further, if any one of 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. Therefore, in this case, Sanjay is entitled to receive 5,000 from Vijay’s assets and 27,500 from Ajay.

Question 6
Explain the rules under the Indian Contract Act, 1872 as regards to time and place for the performance of the promise?
Answer

Section 46 to 50 of the Indian Contract Act, 1872 are relevant provisions regarding the time and place for the performance of the promise which are as follows:

(i)  *If no time is specified*, the promise must be performed within a reasonable time. The expression ‘reasonable’ time is to be interpreted having regard to the facts and circumstances of a particular case (Section 46).

(ii) *If a promise is to be performed on a specified date* but the hour is not mentioned, the promisor may perform it at any time during the usual hours of business, on such day. Moreover, the delivery must be made at the usual place of business (Section 47).

(iii) *Where no place is fixed*, it is the duty of the promisor to ask the promisee to fix a reasonable place for the performance of the promise. In all cases the promisor must apply to the promisee; here no distinction is made between an obligation to pay money and obligation to deliver goods or discharge any other obligation [Section 40].

The above rules regarding the time and place for the performance of promise apply, only when the promisor undertakes to perform the promise without an application being made by the promisee.

(iv) *Where the promisor has not undertaken to perform the promise without an application by the promisee*, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business (Section 48).

Generally, the performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Question 7

*Under what circumstances the doctrine of Supervening Impossibility is not applicable?*

Answer

**Non-Application of Doctrine of Supervening Impossibility:** Events which make the performance of the contract impossible subsequent to formation of the contract known as supervening or subsequent impossibility. The effect of such impossibility is that it makes the contract void and the parties are discharged from further performance of the contract and thereby contract is discharged, (Section 56, Indian Contract Act, 1872). There are certain exceptions. The doctrine of supervening impossibility does not apply in the following cases:

(i) *Performance becoming difficult:* A contract is not discharged merely because its performance turns out to be difficult or burdensome. The parties will not be released from their obligations on account of rise or fall of price, depreciation or appreciation of currency obstacle to the execution of the contract or becoming more expensive or less profitable.

(ii) *Commercial impossibility:* Performance cannot be excused on the ground of commercial impossibility. A contract is not discharged merely because the necessary raw material is
available at a very high rate or the expectation of higher profit will not be realized or the performance of contract has become costlier or the necessary transport is available at exorbitant rates or the contract has become costlier in terms of money or labour.

(iii) **Default of third person:** If the contract cannot be performed because of the default of a third person on whose work or conduct the promisor relied, the promisor is not discharged on the ground of frustration.

(iv) **Strikes, lockouts, riots or civil disturbances:** A contract is not discharged automatically on the ground of supervening impossibility due to a strike by the workers or lock-out by the owners or outbreak of riots or outbreak of some civil disturbance coming in the way of performance of the contract. However, the parties to the contract may agree to the contrary by making a clear provision in this regard.

(v) **Partial impossibility:** If a contract is made for the fulfillment of several objects, the failure of one or more of them does not discharge the contract.

(vi) **Self-Induced frustration:** If frustration is imposed by the conduct of the party himself, or by the conduct of those for whom he is responsible, or by party’s deliberate or negligent act or choice, the contract is not discharged.

**Question 8**

*Explain what is meant by “Supervening Impossibility” as per the Indian Contract Act, 1872 and also state the situations which would not constitute grounds of impossibility.*

**Answer**

**Supervening Impossibility** - The idea of “supervening impossibility” is referred to as ‘Doctrine of Frustration’ in U.K. In order to decide whether a contract has been frustrated, it is necessary to consider the “intention of parties as are implied from the terms of contract”. However, in India the ‘doctrine of frustration’ is not applicable. Impossibility of performance must be considered only in terms of section 56 of the Act. Section 56 covers only ‘supervening impossibility and not implied terms’. This view was upheld by Supreme Court in Satyabrata Ghose Vs Mugneeram Bangur A.I.R. (1954) S.C. 44.

Doctrine of frustration applies in the case of supervening impossibility, where the performance of the contract has become impossible and where the object of the contract has failed. This doctrine does not apply – where the performance simply becomes difficult / commercially impossible / impossibility induced by the act or the conduct of any person etc.

**Various situations as not constituting grounds of impossibility**-

i. A Promised to B that he would arrange for B’s marriage with his daughter. A could not persuade his daughter to marry B. B sued A who pleaded on the ground of impossibility that he is not liable to any damages. But it was held that there was no ground of impossibility. It was held that A should not have promised what he could not have
accomplished. Further A had chosen to answer for voluntary act of his daughter and he was liable.

ii. The defendant agreed to supply specified quantity of ‘cotton’ manufactured by a mill within a specified time to plaintiff. The defendant could not supply the material as the mill failed to make any production at that time. The defendant pleaded on the ground of impossibility which was not approved by the Privy Council and held that contact was not performed by defendant and he was responsible for the failure (Hamandrai Vs Pragdas 501A).

iii. The defendant agreed to procure cotton goods manufactured by Victoria Mills to plaintiff as soon as they were supplied to him by the mills. It was held by Supreme Court that the contract between defendant and plaintiff was not frustrated because of failure on the part of Victoria Mills to supply goods (Ganga Saran Vs Finn Rama Charan, A.I.R. 1952 S.C.9).

iv. A dock strike would not necessarily relieve a labourer from his obligation of unloading the ship within specified time.

v. Impossibility of performance that “having regard to the actual existence of war condition, the extent of the work involved and total absence of any definite period of time agreed to the parties, the contract could not be treated as falling under impossibility of performance (Satyabrata Ghose Vs Mugneeram Bangur A.I.R, 1954) S.C. 44). In the given case the plaintiff had agreed to purchase immediately after outbreak of war a plot of land. This plot of land was part of a scheme undertaken by the defendant who had agreed to sell after completing construction of drains, roads etc. However, the said plot of land was requisitioned for war purpose. The defendant thereupon wrote to plaintiff asking him to take back the earnest money deposit, thinking that the contract cannot be performed as it has become impossible of being performed. The plaintiff brought a suit against the defendant that he was entitled for conveyance of the plot of land under condition specified in the contract. It was held that the requisition order did not make the performance impossible. While judging the impossibility of performance issue, the Courts would be very cautious since contracting parties often bind themselves to perform at any cost of events without regard to price prevailing and market conditions.

Question 9

Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872.

Answer

Delivery of Bags: According to Section 56 (Para 2) of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the
contract becomes void, this is termed as ‘supervening impossibility’ (i.e. impossibility which
does not exist at the time of making the contract, but which arises subsequently).

But impossibility of performance is, as a rule, not an excuse from performance. It means that
when a person has promised to do something, he must perform his promise unless the
performance becomes absolutely impossible. Whether a promise becomes absolutely
impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and
civil disturbances and the contract in such a case is not discharged unless otherwise agreed
by the parties to the contract (Budget v Bennington; Jacobs v Credit Lyonnais).

In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the
workers. This difficulty in performance cannot be considered as impossible of performance
attracting Section 56 (Para 2) and hence Mr. Akhilesh is liable to Mr. Shekhar for non-
performance of contract.

Question 10

M owes money to N under a contract. It is agreed between M, N and O that N shall henceforth
accept O as his debtor instead of M. Referring to the provisions of the Indian Contract Act,
1872, state whether N can claim payment from O?

Answer

Yes, a contract need not be performed when the parties to it agree to substitute a new
contract for it or to rescind or alter it. (Section 62, Indian Contract Act, 1872). Here, in the
given problem, novation has taken place as one of the parties has been replaced with a third
party. Therefore, N can claim the money from O.

Question 11

State in brief, the grounds on basis of which a contract is discharged under the provisions of
Indian Contract Act, 1872.

Answer

Discharge of Contract: A contract under the provisions of Indian Contract Act, 1872, may be
discharged in any of the following ways:

1. Discharge by performance: Discharge by performance will take place when there is:
   (i) Actual performance (parties fulfilling obligations within time and in the manner
       prescribed); or
   (ii) Attempted performance (promisor offers to perform but promisee refuses to accept
        it). This is also known as tender.

2. Discharge by mutual agreement: Discharge also takes place where there is substitution
   [novation], rescission, alteration and remission. In all these cases old contract need not
   be performed.
Discharge by impossibility of performance: A situation of impossibility may have existed at the time of entering into the contract or it may have transpired subsequently (also known as supervening impossibility). Situations are destruction of the subject-matter, incapacity, declaration of war etc.

Discharge by lapse of time: Performance of contract has to be done within certain prescribed time. In other words it should be performed before it is barred by law of limitation. In such a case there is no remedy for the promisee. For example where the debt is barred by law of limitation.

Discharge by operation of law: Where the promisor dies or goes insolvent there is a discharge of contract by operation of law.

Discharge by breach of contract: Where there is a default by one party from performing his part of contract on due date then there is breach of contract. Breach of contract can be actual breach or anticipatory breach. Where a person repudiates a contract before the stipulated due date, it is anticipatory breach.

Discharge by remission or satisfaction: A promisee may remit the performance of the promise by the promisor. Here there is a discharge. Similarly the promisee may accept some other satisfaction. Then again there is a discharge on the ground of accord and satisfaction.

Under the provisions of the Indian Contract Act, 1872 as contained in Section 67, when a promisee neglects or refuses to afford the promisor reasonable facilities or opportunities for performance, promisor is excused by such neglect or refusal.

Question 12

Explaining the provisions of the Indian Contract Act, 1872, answer the following:

(i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A’s performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?

(ii) C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

Answer

(i) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B omits to supply the timber. Hence C is discharged from his liability.

(ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the
principal debtor, the surety is not discharged. In the given question the contract to give
time to the principal debtor is made by the creditor with X who is a third person. X is not
the principal debtor. Hence A is not discharged.

Question 13

Under what circumstances the original contract need not be performed as stated under
section 62 to 67 of the Indian Contract Act, 1872?

Answer

Contracts which need not to be performed: A contract would not require performance
These circumstances are (i) novation, (ii) rescission, (iii) alteration and (iv) remission.

(1) Novation: Novation means substitution. Where a given contract is substituted by a
new contract, it is novation. The old contract, on novation ceases. It need not be
performed. Novation can take place with mutual consent. However, novation can
take place by substitution of new contract between the same parties or between
different parties. Novation results in discharge of old contract.

(2) Rescission: In case of rescission, the old contract is cancelled and no new
contract comes in its place. A contract is also discharged by rescission.
Sometimes, parties may enter into an agreement to rescind the previous contract.
Sometimes, the contract is rescinded by implication or by non-performance for a
long time without each other complaining about it.

(3) Alteration: Where the contract is altered, the original contract is rescinded. Hence,
the old one need not be performed whereas the new one has to be performed.
Alteration involves both rescission and novation. The line of difference between
alteration and novation is very thin. While there can be very minor alterations,
there cannot be unilateral material alteration to a contract. If it is done it will be
void.

(4) Remission means waiver: Section 63 of the Act deals with remission. It provides
that “every promisee may dispense with or remit wholly or in part, the performance
of the promise made to him or may extend the time for such performance or may
accept instead of it any satisfaction which it thinks fit”. Thus the promisee can
waive either in full or in part the obligation of the promisor or extend the time for
performance.

Exercise

1 M and N had a contract. M broke it. N had a right to file a case against M for damages. N wants to
assign this right. Decide.
1. X agrees to sell 50 tons of some raw material to Y on 20th June, 2010. X delivers the goods on 30th June, 2010. Is Y bound to accept the goods?

[Hint: No, because, in commercial deals, time is of essence]

2. X, Y, and Z jointly sell goods to D for ₹ 18,000. After a week, D pays the total amount to Y alone. Is D discharged from liability?

[Hint: No, The right to demand the performance lies with the joint promisees jointly, unless agreed otherwise.]

3. ‘B’ the son of ‘A’ has inherited assets & liabilities from his father after his death. But the liabilities were more than the assets. Whether ‘B’ will be responsible to pay only to the extent of the assets he has inherited?

[Hint: Yes]

4. A, B and ‘C’ jointly borrowed a sum of money from ‘X’. ‘A’ dies, whether his legal representative ‘L’ would be liable to repay the loan along with ‘B’ and ‘C’?

[Hint: Yes]

5. X, Y & Z jointly borrow from ‘P’ ₹ 3000/- the liability of borrower is joint & several.

(i) Whether ‘P’ can recover the amount either from ‘X’ or from ‘Y’ or from ‘Z’ or from all of them jointly?

(ii) Similarly whether the creditor can bring a suit against any one or more of legal heirs of a debtor on his death?

[Hints: (i) Yes, (ii) No]

6. A sells 500 quintals of rice to ‘B’ and ‘B’ promises to pay the price on delivery. What is the name of promise in this case?

[Hints: Reciprocal Promise, ]

7. Where there are two debts one ₹ 500/- another ₹ 700/- falling due on the same day and if the debtor pays ₹ 600/-. Whether the appropriation can be made prorata for the two debts?

[Hint: Yes]
UNIT- 5: BREACH OF CONTRACT

Question 1

(a) What is meant by Anticipatory Breach of Contract?

(b) Mr. Dubious textile enters into a contract with Retail Garments Show Room for supply of 1,000 pieces of Cotton Shirts at ₹ 300 per shirt to be supplied on or before 31st December, 2004. However, on 1st November, 2004 Dubious Textiles informs the Retail Garments Show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone upto ₹ 350 per shirt. Examine the rights of the Retail Garments Show Room in this regard

Answer

(a) Anticipatory breach of contract: Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived. In such a situation the promisee can claim compensation by way of loss or damage caused to him by the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfillment of the promise by the promisor is over.

(b) In the given problem Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1st November 2004 itself when it has time upto 31st December 2004 for performance of the contract of supply of goods. It is therefore called anticipatory breach of contract. Thus Retail Garments show room can claim damages from Dubious Textiles immediately after 1st November, 2004, without waiting upto 31st December 2004. The damages will be calculated at the rate of ₹ 50 per shirt i.e. the difference between ₹ 350/- (the price prevailing on 1st November) and ₹ 300/- the contracted price.

Question 2

Mr. Ramaswamy of Chennai placed an order with Mr. Shah of Ahmedabad for supply of Urid Dhall on 10.11.2006 at a contracted price of ₹ 40 per kg. The order was for the supply of 10 tonnes within a month’s time viz. before 09.12.2006. On 04.12.2006 Mr. Shah wrote a letter to Mr. Ramaswamy stating that the price of Urid Dhall was sky rocketing to ₹ 50 Per. Kg. and he would not be able to supply as per original contract. The price of Urid Dhall rose to ₹ 53 on 09.12.06 Advise Mr. Ramaswamy citing the legal position.

Answer

The stated problem falls under the head ‘anticipatory breach of contract' defined in Section 39 of the Indian Contract Act, 1872.

The case law applicable here is Frost vs. Knight. As per details in the problem, price as contracted ₹ 40 per kg on 10.11. 2006 rose to ₹ 50 per kg as on 4.12.2006 and finally to ₹ 53 per kg, on 09.12.2006.
The answer to the problem is that

1. Mr. Ramaswamy can repudiate the contract on 04.12.2006 and can claim damages of ₹ 10 per kg viz. ₹ 1,00,000.

2. He could wait till 09.12.2006 and claim ₹ 1,30,000 i.e. ₹ 13 per kg.

3. If the Government, in the interim period i.e. between 04.12.2006 and 09.12.2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Ramaswamy will not be able to recover any damages whatsoever.

Question 3

M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for ₹ 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

Answer

Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd is obliged to compensate for the loss of ₹ 1.25 lakhs (i.e. ₹ 12.75 minus ₹ 11.50 = ₹ 1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

Question 4

State whether the following statement is/ are correct or incorrect:

In case of breach of contract, the Court awards remote damages to the aggrieved party.
Answer

Incorrect

Question 5

How the damages can be calculated on the breach of contract?

Answer

In case of a contract for sale of goods, where the buyer breaks the contract, the damages would be the difference between contract price and market price as on the date of breach. Similarly where the seller breaks the contract, the buyer can recover the difference between market price and contract price as on date of breach.

If the seller retains the goods after the contract has been broken by the buyer he cannot recover from the buyer any further loss even if the market falls. Again he is not liable to have the damages reduced if the market rises.

In Jamal vs. Mulla Dawood (1961) 43.I.A. 6, the defendant agreed to purchase from the plaintiff, certain shares on December 30, but wrongfully rejected them when tendered on date. The difference between the contract price and market price amounted to ₹ 1,09,218; the plaintiff recovered a part of the loss by selling those shares in a rising market and the actual loss amounted to ₹ 79,882. The plaintiff, however, sued the defendant claiming ₹ 1,09,218 as damages and the Privy Council allowed the claim in full.

Question 6

X agreed to sell to Y 100 bags of price @ ₹ 500 per bag, the entire price to be paid at the time of delivery. Before it is delivered, the price of rice per bag goes up by ₹ 50 per bag, X refuses to deliver unless and until Y agrees to the increased price. Y sues X for damages for the breach of contract. What Y can claim as damages?

Answer

In a Contract of sale of Goods, the damages for the breach of contract is measured by the difference in contract price and market price of the goods on the date of breach. In this problem Y can claim ₹ 50 per bag (₹ 550-500) as ordinary damages.

Question 7

What is the law relating to determination of compensation, on breach of contract, contained in section 73 of the Indian Contract Act, 1872?

Answer

Compensation on Breach of Contract: Section 73 of the Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of
it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. The explanation to the section further provides that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

**Question 8**

'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ₹ 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ₹ 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ₹ 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. What would be the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y' s contract? Explain with reference to the provisions of the Indian Contract Act, 1872.

**Answer**

**BREACH OF CONTRACT: DAMAGES:** Section 73 of the Indian Contract Act, 1872 lays down that when a contract has been broken the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

The leading case on this point is "Hadley v. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ₹ 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

If 'X' had not informed 'Z' of 'Y' s contract then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ₹ 750/- (i.e. 1000 water bottles x 0.75 paise).
Exercise

1. A was appointed as a managing director by a company. Later on it was found that appointment was invalid because the director appointed him were not eligible. Can A claim salary for the time he worked?

[Hint: Yes, he is entitled to remuneration for the services rendered on quantum meruit basis]

2. X contracted to sell 100 kg of Sugar to Y at ₹ 15 per kg on a certain date. In anticipation X contracted to purchase from Z the same quantity at ₹ 8 per kg. Z does not deliver the sugar to X. X suffers the loss of ₹ 7 per kg. Can he recover this loss from Z?

[Hint: No. This loss amount to special loss which X and Z had not contemplated in their contract.]

3. A appointed B to accompany him on a tour for three months from 1st July at a certain salary. Before the 1st July, A told B that B was no more required by him. Can B sue A?

[Hint: Yes on the basis of the anticipatory breach of contract]

4. In case of breach of promise to marry the damages are awarded under what type of measurement of damage and what will be taken into account to give damage?

[Hint: Exemplary damages, would take into account the injury suffered by the person]

5. When the buyer breaks the contract, the damage would be the difference between ___ price and _____ price.

When the seller breaches the contract, the buyer can recover the difference between.____ price and ______ price as on the date of breach.

[Hint: Contract, Market & Market, Contract]

6. How liquidated damages and penalty are imposed?

[Hint: By compensation and punishment]
UNIT – 6: CONTINGENT AND SPECIAL CONTRACTS

Question 1

Pick out the correct answer from the following:

(a) In case of void agreements, collateral transactions are:
   (1) Also void
   (2) Unenforceable
   (3) Not affected
   (4) Illegal.

(b) A contract of insurance is:
   (1) Contingent Contract
   (2) Wagering Agreement
   (3) Contract of Guarantee
   (4) Unilateral Agreement.

Answer

(a) (3) Not affected.
(b) (1) Contingent Contract.

Question 2

Pick-up the correct answer from the following and give reason:

A contingent contract is:

(1) Valid            (2) Void
(3) Voidable        (4) Illegal.

Answer

Option (1) is the correct answer: Contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen.

Question 3

What are contingent contracts? Explain the rules for enforcement. How does it differ from wagering agreement?
Section 31 of the Indian Contract Act, 1872 defines contingent contract as the contracts, which are conditional on some future event happening or not happening and are enforceable when the future event or loss occurs.

Rules for enforcement-
- Contingent contract dependent on the happening of some uncertain future event.
- Contingent contract dependent upon not happening of some uncertain future event.
- Contingent contract dependent upon the future act or conduct of a living person.
- Contingent contract dependent upon the happening of specified event within fixed time.
- Contingent contract dependent upon specified event not happening within fixed time.
- Contingent contracts depend upon impossible event.

Contingent contract and wagering agreement

Contingent contract is a contract to do or not to do something if some event, collateral to such contract does or does not happen whereas on other hand a wagering agreement is a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event.

Question 4

Enumerate the differences and similarities between ‘wagering agreements’ and ‘contingent contracts’.

Answer

Distinction and similarities between wagering agreement and contingent contract are as follows – [Note that there cannot be any ‘wagering contract’, as wagering agreement is void and cannot become ‘contract’].

<table>
<thead>
<tr>
<th>Wagering Agreement</th>
<th>Contingent Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Differences</strong></td>
<td></td>
</tr>
<tr>
<td>A wagering agreement is a promise to give money or money’s worth, depending on a future uncertain event.</td>
<td>A contingent contract is to do or not to do something if some event does or does not happen [section 32].</td>
</tr>
<tr>
<td>In a wager, the future event is the only event. It is the sole determining factor of contract in wager.</td>
<td>In contingent contract, the future uncertain event is collateral to the contract.</td>
</tr>
<tr>
<td>In a wagering agreement, parties have no pecuniary or financial interest in subject matter</td>
<td>In contingent contract, the party has pecuniary financial interest in the event.</td>
</tr>
</tbody>
</table>
The Indian Contract Act, 1872

Wagering agreement is a game of chance. Wagering agreement consists of reciprocal promises. It is a set of mutual promises, each of them conditional on the happening or not happening of a future uncertain event. A contingent event is uncertain but not a game of chance. A contingent contract may or may not contain reciprocal promises.

In a wager, the uncertain event is beyond the power of both parties. In contingent contract, the event may be within the power of one of the parties.

Wagering agreement is void. Contingent contract is valid.

**Similarities**

Performance of agreement depends on happening or not happening of a future uncertain event.

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**Question 5**

X, a minor was studying M.Com. in a college. On 1st July, 2005 he took a loan of ₹10,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2005. X possesses assets worth ₹2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X’s) assets. Referring to the provisions of the Indian Contract Act, 1872 decide whether B would succeed.

**Answer**

Yes, B can proceed against the assets of X. According to section 68 of the Indian Contract Act, 1872 “If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.” Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.

**Question 6**

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 arrear, 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

Yes, X is bound to make good to Y the amount so paid. 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. Therefore, Y is entitled to get the reimbursement from X.

Question 7

Z rent out his house situated at Mumbai to W for a rent of ₹10,000 per month. A sum of ₹5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z.

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 problem W has made the payment of lawful dues of Z in which W had an interest. Therefore, W is entitled to get the reimbursement from Z.

Question 8

The principle that no one shall be allowed to enrich himself at the expense of another is known as:

1. Quantum Meruit  
2. Nudum Pactum  
3. Quasi-contract  
4. None of these.

Answer

Correct answer is (3) i.e. “Quasi Contract”: In certain situations, a person is obliged to compensate another although the basis of this obligation is neither a contract between the parties nor any tort on the part of the person who is bound to compensate. The basis of the obligation is that no one should have unjust benefit at the cost of the other. It is based on equity. These obligations relate to money and such other benefits, which the party under obligation has benefited from the other.

Question 9

Enumerate the rights of the finder of lost goods.

Answer

Finding is not keeping. The finder must make reasonable efforts to locate the real owner and may also spend reasonable money in taking care of the goods found. However, he earns certain rights also as against the goods found as well as the owner of those goods. His rights are:
(1) He has a right of lien over the goods for his expenses. But he has no right to sue the owner for any such compensation (Section 168).

(2) He can sue for any specific reward, which the owner has offered for the return of goods (Section 168).

(3) He can even sell the goods under the following circumstances:
   (a) If the owner cannot with reasonable diligence be found;
   (b) If found, he refuses to pay the lawful charges of the finder;
   (c) If the goods are in the danger of perishing or of losing the greater part of their value
   (d) If the lawful charges of the finder, in respect of the goods found, amount to more than two thirds of their value (Section 169).

Question 10

Explain the meaning of ‘Quasi-Contracts’. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872.

Answer

Quasi-Contracts: Meaning; Features; Identified Circumstances (Sections 68 to 72 of the Indian Contract Act, 1872):

Meaning and Salient Features: Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as “quasi-contracts” as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money; Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

Circumstances Identified as Quasi-Contracts:

1. Claim for necessaries supplied to persons incapable of contracting: Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person’s property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.

2. Right to recover money paid for another person: A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.
3. **Obligation of person enjoying benefits of non-gratuitous act**: Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

4. **Responsibility of finder of goods**: A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.

5. **Liability for money paid or thing delivered by mistake or by coercion**: A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

In all the above cases contractual liability arises without any agreement between the parties.

**Exercise**

1. M found a purse in a mall. He deposited the purse to the manager of the mall, so that the true owner can claim it back. However, no one claimed the purse. M wants the purse back. Can he succeed?
   
   [**Hint**: Yes, finder’s right of possession is superior to all except the true owner.]

2. P pays the arrears of rent of his nephew to his landlord just to avoid tension. Can he recover this amount from his nephew?
   
   [**Hint**: No, Section 69 applies only when such a payment is made in which the person is interested]

3. N had to pay property tax to the government. To save N's property from being seized by the government, N's friend O paid the tax to the government in N's presence. Can O recover the money from N?
   
   [**Hint**: Yes, under the section 70 of the Indian Contract Act, 1872]

4. A promises to sell his bike to Z for ₹75,000 if he feels like selling it after having a new bike. Is it a contingent contract?
   
   [**Hint**: No, it is a void agreement because it is an uncertain agreement]

5. A agrees to make a furniture for B for ₹1 lac on the term that payment will be made after the completion of the work. Is it a contingent contract?
   
   [**Hint**: No, because the uncertain event(completion of the work) is not collateral to the contract, but the main part of the consideration in the contract]

6. 'A' agrees to pay 'B' Rupee One lakh if sun rises in the west next morning. Is the contract valid?
   
   [**Hint**: No-Contract is void]

7. A promises to give money or money's worth if an uncertain event happens or does not happen is ..........agreement. A contract to do or not to do something with reference to a collateral event happening or not happening is ..........contract.
   
   [**Hint**: Wagering & Contingent]
UNIT – 7: CONTRACT OF INDEMNITY AND GUARANTEE

Question 1
Pick out the correct answer from the following and give reason:

A contracts to save B against the consequences of any proceedings, which C may take against B in respect of a certain sum of 500 rupees. This is a:

- (1) Contract of guarantee
- (2) Quasi contract
- (3) Contract of indemnity
- (4) Void contract.

Answer
No. (3): ‘Contract of Indemnity’: A Contract of indemnity is a Contract by which one party promises to save or indemnify the other from loss caused to him by the promisor himself or by the conduct of any other person (Section 124, Indian Contract Act, 1872).

Question 2

M advances to N ₹ 5,000 on the guarantee of P. The loan carries interest at ten percent per annum. Subsequently, N becomes financially embarrassed. On N’s request, M reduces the interest to six percent per annum and does not sue N for one year after the loan becomes due. N becomes insolvent. Can M sue P?

Answer
M cannot sue P, because a surety is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor, no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety (Sec.133, Indian Contract Act, 1872).

Question 3
Choose the correct answer from the following and give reason:

In a Contract of Guarantee there is/are:

- (a) One contract
- (b) Two contracts
- (c) Three contracts
- (d) Four contracts.

Answer
(c) Reason: In a Contract of Guarantee there are three contracts arising between the Creditor & Principal debtor, Creditor and Surety and Principal debtor and Surety. However, the contract is primarily between Principal debtor & Creditor whereas the other two contracts are ancillary.

Question 4
What are the rights of the indemnity-holder when sued?
Answer

According to the Section 125 of the Indian Contract Act, 1872 the indemnity holder i.e., promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor:

1. all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

2. all costs which he may be compelled to pay in any such suit, if in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit.

3. all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

Section 125 is by no means exhaustive, which deals only with his rights in the event of his being sued. The indemnity holder has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute he is entitled to call upon his indemnifier to save him from that liability and to pay it off.

Question 5

Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid?

Answer

Section 124 of the Indian Contract Act, 1872 says that “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person”, is called a “contract of indemnity”.

Section 126 of the Indian Contract Act says that “A contract to perform the promise made or discharge liability incurred by a third person in case of his default.” is called as “contract of guarantee”.

The conditions under which the guarantee is invalid or void are stated in section 142, 143 and 144 of the Indian Contract Act are:

(i) Guarantee obtained by means of misrepresentation.

(ii) Creditor obtained any guarantee by means of keeping silence as to material circumstances.

(iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.
Question 6

Point out the circumstances in which a surety is discharged from liability by the conduct of the creditor.

Answer

Discharge of Surety is a person who promises to undertake the responsibility to perform the promise or discharge the liability of third person in case of his default (Section 126). A surety is said to be discharged when his liability come to an end. A surety may be discharge from his liability by the conduct of the creditor in the following cases:

(i) Variance in terms of contract (Section 133): Any variance, made without the surety’s consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as transactions subsequent to the variance.

(ii) Release or discharge of principal debtor (Section 134): The surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

But in the following cases the surety will not be discharged even though the principal debtor has been released.

(a) If the principal debtor is discharged by operation of law e.g. discharge/insolvency.
(b) If creditor omits to sue the principal debtor within the period of limitation.

(iii) By impairing surety’s remedy (Section 139): If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which the duty to the surety requires him to do, and the eventual remedy of surety himself against the principal debtor is thereby impaired, the surety is discharged.

(iv) Compounding by creditor with the principal debtor (Section 135): Any contract between the principal debtor and the creditor by which the creditor makes composition with, or promises to given time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

But under this head the surety is not discharged in the following cases:

(a) Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor (Section 136).
(b) Mere forbearance on the part of the creditor to sue the principal debtor to enforce any other remedy against him does not discharge the surety (Section 137)
(c) Where there are co-sureties, release by the creditor of one of them does not discharge the other; neither does it free the surety so released from his responsibility to the other sureties (Section 138).
(v) By loss of security (Section 141): If the creditor loses or without the consent of the surety, parts with any security given to him at the time of the contract of guarantee, the surety is discharged from liability to the extent of the value of security.

(vi) Guarantee obtained by misrepresentation or concealment: Where a guarantee is obtained by misrepresentation or concealment by the creditor concerning a material part of the transaction, the surety is discharged.

Question 7

Mr. X, is employed as a cashier on a monthly salary of ₹ 2,000 by ABC bank for a period of three years. Y gave surety for X’s good conduct. After nine months, the financial position of the bank deteriorates. Then X agrees to accept a lower salary of ₹ 1,500/- per month from Bank. Two months later, it was found that X has misappropriated cash since the time of his appointment. What is the liability of Y?

Answer

If the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X during the first nine months but not for misappropriations committed after the reduction in salary. [Section 133, Indian Contract Act, 1872].

Question 8

B owes C a debt guaranteed by A. C does not sue B for a year after the debt has become payable. In the meantime, B becomes insolvent. Is A discharged? Decide with reference to the provisions of the Indian Contract Act, 1872.

Answer

Discharge of surety: The problem is based on the provisions of Section 137 of the Indian Contract Act, 1872 relating to discharge of surety. The section states that mere forbearance on the part of the creditor to sue the principal debtor and/or to enforce any other remedy against him would not, in the absence of any provision in the guarantee to the contrary, discharge the surety. In view of these provisions, A is not discharged from his liability as a surety.

Question 9

Ravi becomes guarantor for Ashok for the amount which may be given to him by Nalin within six months. The maximum limit of the said amount is ₹ 1 lakh. After two months Ravi withdraws his guarantee. Upto the time of revocation of guarantee, Nalin had given to Ashok ₹ 20,000.

(i) Whether Ravi is discharged from his liabilities to Nalin for any subsequent loan.

(ii) Whether Ravi is liable if Ashok fails to pay the amount of ₹ 20,000 to Nalin?
Answer

Discharge of Surety by Revocation (Problem): As per section 130 of the India Contract Act, 1872 a specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.

As per the above provisions, the answer is Yes. Ravi is discharged from all the subsequent loans because it’s a case of continuing guarantee. Where as in second case (ii) Ravi is liable for payment of ₹ 20,000 to Nalin because the transaction has already completed.

Question 10

‘A’ stands surety for ‘B’ for any amount which ‘C’ may lend to B from time to time during the next three months subject to a maximum of ₹ 50,000. One month later A revokes the guarantee, when C had lent to B ₹ 5,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether ‘A’ is discharged from all the liabilities to ‘C’ for any subsequent loan. What would be your answer in case ‘B’ makes a default in paying back to ‘C’ the money already borrowed i.e. ₹ 5,000?

Answer

The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.

2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

The liability of the surety for previous transactions however remains.

Thus applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan.

Answer in the second case would differ i.e. A is liable to C for ₹ 5,000 on default of B since the loan was taken before the notice of revocation was given to C.

Question 11

Mr. X, is employed as a cashier on a monthly salary of ₹ 2,000 by ABC bank for a period of three years. Y gave surety for X’s good conduct. After nine months, the financial position of the bank deteriorates. Then X agrees to accept a lower salary of ₹ 1,500/- per month from Bank. Two months later, it was found that X has misappropriated cash since the time of his appointment. What is the liability of Y?
Answer

If the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Y is liable as a surety for the loss suffered by the bank due to misappropriation of cash by X during the first nine months but not for misappropriations committed after the reduction in salary. [Section 133, Indian Contract Act, 1872].

Question 12

M advances to N ₹ 5,000 on the guarantee of P. The loan carries interest at ten percent per annum. Subsequently, N becomes financially embarrassed. On N's request, M reduces the interest to six per cent per annum and does not sue N for one year after the loan becomes due. N becomes insolvent. Can M sue P?

Answer

M cannot sue P, because a surety is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor, no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety (Sec. 133, Indian Contract Act, 1872).

Question 13

A gives to C a continuing guarantee to the extent of ₹ 5000 for the vegetables to be supplied by C to B from time to time on credit. Afterwards, B became embarrassed, and without the knowledge of A, B and C contract that C shall continue to supply B with vegetables for ready money, and that the payments shall be applied to the then existing debts between B and C. Examining the provision of the Indian Contract Act, 1872, decide whether A is liable on his guarantee given to C.

Answer

The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 133. The section provides that any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

In the given problem all the above requirements are fulfilled. Therefore, A is not liable on his guarantee for the vegetable supplied after this new arrangements. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there and he is not liable on the altered contract because it is different from the contract made by him.

Question 14

C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?
Answer

According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence A is not discharged.

Question 15

A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A’s performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability.

Answer

According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission for the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case the B omits to supply the timber. Hence C is discharged from his liability.

Question 16

What are the rights of a surety against the principal debtor and as against co-sureties?

Answer

Rights of a surety against the Principal Debtor:
1. Right to be subrogated (Section 140)
2. Right to claim indemnity (Section 145)

Right of surety against co-sureties:

When a debt is guaranteed by two or more sureties, they are known as co-sureties. The rights are

1. Liability of co-sureties to contribute equally in the absence of any contract to the contrary (Section 146).
2. Liability for equal limits (Section 147), where the co-sureties have agreed to guarantee different sums, they have to contribute equally subject to maximum amount guaranteed by any one.
3. Right to share security obtained from the creditor.
Question 17
What are the principles of law of guarantee with regard to contribution of the same debt between the co-sureties?

Answer

Contribution as between co-sureties: The principle in this regard is laid down in Section 146 of the Indian Contract Act, 1872 which is as follows:

“When two or more persons are co-sureties for the same debt, or duty either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the company, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor”.

A co-surety is entitled to recover from other sureties the amount that he has paid but the right arises only if the surety has paid an amount beyond his share of the debt to the creditor, for only then does it become certain that there is ultimately a case for contribution at all. A judgement against the surety at the suit of the creditor for the full amount of the guarantee will have the same effect as payment made for these parties and would entitle the surety or his representative to a declaration of the right to contribution on the very same principle by which the rights of company trustees in respect of amount which they are made liable to pay are settled.

Liabilities of two sureties are not affected by mutual agreements between them. This principle has been laid down in Section 132 which runs thus, where two persons, contract with a third party to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

This position is applicable when the liability is undertaken jointly by two parties in respect of the same debt but not in different debts [Pogose v. Bank of Bengal (1877)].

Question 18

Amit stands surety for ‘Bikram’ for any amount which ‘Chander’ may lend to ‘Bikram’ from time to time during the next three months subject to a maximum amount of ₹1,00,000 (one lakh only). One month later ‘Amit’ revokes the surety, when ‘Chander’ had already lent to ‘Bikram’ ₹10,000 (ten thousand). Referring to the provisions of the Indian Contract Act, 1872. Decide:

(i) Whether ‘Amit’ is discharged from all the liabilities to ‘Chander’ for any subsequent loan given to ‘Bikram’?
(ii) What would be your answer in case 'Bikram' makes a default in paying back to 'Chander' the already borrowed amount of ₹10,000?

Answer

Revocation of continuing guarantee: The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.

2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

So far as the transactions before revocation are concerned, the liability of the surety for previous transactions (i.e. before revocation) remains.

(i) Thus applying the above provisions in the given case, Amit is discharged from all the liabilities to Chander for any subsequent loan.

(ii) Answer in the second case would differ i.e. Amit is liable to Chander for ₹10,000 on default of Bikram since the loan was taken before the notice of revocation was given to Chander.

Exercise

1. X contracts to indemnify Y for the loss resulting out of litigation filed against him(Y) by Z. Z obtains a court decree against Y. Before paying to Z, Y sues X to get the promised amount. Will B succeed?

[Hint: Yes, the liability of the indemnifier commences as soon as the liability of the indemnifier becomes absolute]

2. A became surety before X for payment of rent by Y under a lease. Subsequently, without A’s consent, Y agreed to pay higher rent to X. What is the position of the A?

[Hint: A is discharged in respect to arrears of rent subsequent to such variance]

3. D, a dealer, supplies certain goods to F in separate lots regularly. Z guarantees payment by F upto ₹45,000 for goods supplied from time to time. Can a Guarantee by Z be revoked?

[Hints: Yes, Because it is a continuing guarantee.]

4. A farmer contracted to sell grains to merchant to be grown on his land. S guarantees performance by farmer. Merchants later divert the stream of water necessary for irrigation of Farmer’s land. As a result, the crop could not be grown. Is S liable for the guarantee?

[Hint: No, S is not liable for the guarantee as per section 134 of the Indian Contract Act, 1872]
5. A obtains housing loan from LIC Housing and if B promises to repay what is the nature of contract?

[Hint: Contract of Guarantee]

6. If A becomes a surety to C for payment of rent by B under a lease and B and C contract, without the consent of ‘A’ that ‘B’ will pay higher rent, then what would be the liability of ‘A’ as a surety?

[Hint: A will be discharged from his liability]

7. ‘A’ puts ‘M’ as the cashier under ‘B’ and agrees to stand as surety provided, ‘B’ checks the cash every month. B does not check the cash every month. ‘M’ embezzles the cash. What is the liability of ‘A’ in this case?

[Hint: A was not held to be responsible]

8. On discharging the debt due by the principal debtor to the creditor what is the remedy available to the surety?

[Hint: He can proceed against the principal debtor]
UNIT – 8: BAILMENT AND PLEDGE

Question 1

What is Bailment? Explain the rights and duties of Bailor?

Answer

Bailment is defined as an act whereby goods are delivered by the person to another for some purpose on a contract that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor – the person who delivers the goods

Bailee- the person to whom the goods are delivered.

**Bailors duties and rights**

**Duties**

(i) Bailor has to disclose all the facts/faults about bailed goods to bailee.

(ii) Under gratuitous bailment, Bailor has to reimburse expenses incurred by Bailee, if any.

(iii) Bailor has to compensate the loss on bailed goods to Bailee, if any.

(iv) Bailor has to accept the goods after purpose is accomplished.

**Rights**

(i) To enforce bailee’s duties such as right to claim damages, compensation, if any.

(ii) To terminate the contract of bailment.

(iii) To demand back goods.

(iv) To claim increase or profit from goods bailed.

Question 2

Examine whether the following constitute a contract of ‘Bailment’ under the provisions of the Indian Contract Act, 1872:

(i) V parks his car at a parking lot, locks it, and keeps the keys with himself.

(ii) Seizure of goods by customs authorities.

Answer

(i) No. Mere custody of goods does not mean possession. For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it, Section 148, of the Indian Contract Act, 1872 is not applicable.

(ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore bailment exists and section 148 is applicable.
Question 3

A, the bailor, pledges a cinema projector and other accessories with Cine Association Cooperative Bank Limited, the bailee, for a loan. A requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and also further promises to handover the possession of the same to the bank whenever demanded. Examine the provisions of the Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between A, the bailor and Bank, the bailee?

Answer

Delivery to pawnee under Indian Contract Act, 1872: The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 149 (delivery to bailee and pledgee). The Section provides that the delivery of the goods to the bailee may be made by actual or constructive delivery or delivery by attornment to the bank. In such a case there is change in the legal character of the possession of goods though not in the actual or physical custody. Though the bailor continues to be in possession of the goods, it is the possession of the bailee.

In the given problem the delivery of the goods is constructive i.e. delivery by attornment to the bailee (pawnee) and the possession of the goods by A, the bailor is construed as possession by bailee/pawnee, the Bank. A constructive pledge comes into existence as soon as the pawnor, without actually delivering the goods, promises to deliver them on demand. The transaction was, therefore, a valid pledge. On this point, the decision given by the Andhra Pradesh High Court in Bank of Chittur Ltd. vs. Narasimhulu AIR 1966 AP 163 is relevant.

Question 4

A hires a carriage of B and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B.

Answer

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

Question 5

A bails his jewelry with B on the condition to safeguard in bank's safe locker. However, B kept in safe locker at his residents, where he usually keeps his own jewelry. After a month all jewelry was lost in a religious riot. A filed a suit against B for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether A will succeed.
Answer

Referring to the Section 152 of the Indian Contract Act, 1872, B is liable to compensate A for his negligence to keep jewelry at his resident. Here, A and B agreed to keep the jewelry at the Bank’s safe locker and not at the latter’s residence.

Question 6

Sunil delivered his car to Mahesh for repairs. Mahesh completed the work, but did not return the car to Sunil within reasonable time, though Sunil repeatedly reminded Mahesh for the return of the car. In the meantime a big fire occurred in the neighborhood and the car was destroyed. Decide whether Mahesh can be held liable under the provisions of the Indian Contract Act, 1872.

Answer

The problem asked in the question is based on the provisions of section 160 and 161 of the Indian Contract Act, 1872. Accordingly, it is the duty of the bailee to return or deliver the goods bailed according to the bailor’s directions, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished. According to Section 161, if, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time, notwithstanding the exercise of reasonable care on his part.

Therefore, applying the above provisions in the given case, Mahesh is liable for the loss, although he was not negligent, but because of his failure to deliver the car within a reasonable time (Shaw & Co. v. Symmons & Sons).

Question 7

M lends a sum of ₹5,000 to B, on the security of two shares of a Limited Company on 1st April 2007. On 15th June, 2007, the company issued two bonus shares. B returns the loan amount of ₹5,000 with interest but M returns only two shares which were pledged and refuses to give the two bonus shares. Advise B in the light of the provisions of the Indian Contract Act, 1872.

Answer

Bailee’s Duties and Liabilities: The problem as asked in the question is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, “in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed.”

Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by B to M. So M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also (Motilal v Bai Mani).
Question 8

R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bear the loss and why?

Answer

M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Question 9

What do you mean by Pledge? What is Pawnor's right to redeem?

Answer

Pledge: Section 172 of the Indian Contract Act, 1872 defines a pledge as the bailment of goods as security for payment of debt or performance of a promise. When goods have been pledged, the bailor is called in this case the pawner and the bailee, the pawnee. In the case of pledge no transfer of any interest in property takes place; but a special right to property is carved out in favour of the pledgee, i.e. he has right to dispose of the property in certain circumstances.

Pawnor's right to redeem: As per the provision laid down under Section 177 of the Indian Contract Act, 1872 if a time is stipulated for the payment of the debt or performance of the promise; for which the pledge is made, and the pawnor makes default, he may redeem the goods pledged at any subsequent time before the goods are sold, but in that case, he must pay, in addition, any expenses occasioned by the default.

The period for a suit against a pawnee to recover the things pledged is 3 years from the date of pawnee's refusal to do so after demand (The Limitation Act 1963 - Schedule, 70).

Question 10

Ravi sent a consignment of goods worth ₹ 60,000 by railway and got railway receipt. He obtained an advance of ₹ 30,000 from the bank and endorsed and delivered the railway receipt in favour of the bank by way of security. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for ₹ 60,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

OR

X sent a consignment of mobile phones worth ₹ 60,000 to Y and obtained a railway receipt therefore. Later, he borrowed a loan of ₹ 40,000 from Star Bank and endorsed the railway receipt in favour of the Bank as security. In transit the consignment of mobile phones was lost. The Bank files a suit against the railway for a claim of ₹ 60,000, the value of the consignment.
The railway contended that the Bank is entitled to recover the amount of loan i.e. ₹40,000 only. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of the railway is valid.

OR

X sent a consignment of goods worth ₹2,90,000 by railway and got railway receipt for the same. He obtained an advance of ₹2,60,000 from the bank and endorsed and delivered the railway receipt in favour of the bank by way of security for the advance. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for ₹2,90,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

Answer

Rights of Bailee: As per Sections 178 and 178A of the Indian Contract Act, 1872 the deposit of title deeds with the bank as security against an advance constitutes a pledge. As a pledgee, a banker’s rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pledgee would have all such remedies that the owner of the goods would have against them. In Morvi Mercantile Bank Ltd. vs. Union of India, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment. However, the amount over and above his interest is to be held by him in trust for the pledgor. Thus, the bank will succeed in this claim of ₹60,000/ 2,90,000 against Railway.

Question 11

Choose the correct answer from following:

The delivery of goods by one person to another for some specific purpose and time is known as:

(a) Mortage
(b) Pledge
(c) Bailment
(d) Charge

Answer

(c) Bailment

Question 12

State the essential elements of a contract of bailment. Distinguish between the ‘contract of bailment‘ and ‘contract of pledge‘.
Answer

Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term ‘Bailment’. A ‘bailment’ is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The essential elements of the contract of the bailment are:-

1. Delivery of goods – The essence of bailment is delivery of goods by one person to another.
2. Bailment is a contract – In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.
3. Return of goods in specific - The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.
4. Ownership of goods – In a bailment, it is only the possession of goods which is transferred and the bailor continues to be the owner of the goods.
5. Property must be movable – Bailment is only for movable goods and never for immovable goods or money.

Difference between contract of bailment and contract of pledge:-

1. Right of sale – In case of pledge, the pawnee (pledgee) can sell the goods and recover his debt, if pawnor (pledger) does not pay while in bailment the bailee can retain the goods and sue for damages, but he has no authority to sell the goods.
2. Purpose – Pledge is specifically for securing a debt, while bailment may be for any purpose e.g. for repairs, safe custody etc.,
3. Right to use the goods – In case of pledge, pawnee cannot use the goods pledged but bailee can use the bailed goods if contract so provides.

Question 13

State whether the following statements are correct or incorrect:

**Bailee has no right to mix the goods bailed with his own goods without the consent of the bailor.**

Answer

Correct

Exercise

1. A gives his old jewellery to a jeweler for making a new jewellery. He defaults in paying the service charges to jeweler. Can jeweler exercise lien for this?

   [Hint: Yes, the jeweler is entitled to exercise particular lien till he is paid]
2. A takes a mobile by fraud from owner. Before owner avoids the contract, A pledges the mobile with C, who takes it in good faith, Can owner recover the mobile from C?

[Hint: Yes, but only after paying the loan taken by A]

3. M had taken the car from N for use for three days. M keeps it for seven days. Then in spite of his utmost care, the car is damaged. Is M liable for damages to N?

[Hint: Yes, under section 161, when bailee fails to return in time, he is liable for any loss to the goods.]

4. Is depositing of money in a bank is a bailment? And why or why not?

[Hint: No-the money cannot be identified]

5. Is depositing of ornaments in a bank locker bailment?

[Hint: No- the ornaments are in possession of owner]

6. ‘X’ bails his ornament to ‘Y’ and ‘Y’ keeps this ornament in his own locker at his house along with his own ornaments and if all the ornament are lost, whether ‘Y’ is responsible for the loss to ‘X’?

[Hint: No- he has exercised with ordinary prudence]

7. In bailment the bailee cannot sell the goods, he can either retain the goods or sue for non-payment of dues. What is the position in case of pledge?

[Hint: He enjoys the right to sell after giving the notice]
UNIT – 9: AGENCY

Question 1

State the meaning of Agency and its silent features.

Answer

The Indian Contract Act, 1872 does not define the word ‘Agency’. However, the word ‘Agent’ is defined as a person employed to do any act for another or to represent another in dealings with third persons. The third person for whom the act is done or is so represented is called “Principal”.

Salient features of agency

Following are the four salient features of agency

(i) Basis-The basic essence of ‘agency’ is that the principal is bound by the acts of the agent and is answerable to third parties.

(ii) Consideration not necessary-Unlike other regular contracts, a contract of agency does not need consideration.

(iii) Capacity to employ an agent- A person who is competent to contract alone can employ an agent. In other words, a person in order to act as principal must be a major and of sound mind.

(iv) Capacity to be an agent- A person in order to be an agent must have authority to contract. In other words, an agent brings about a contractual relationship between the principal and third persons.

Question 2

A appoints M, a minor, as his agent to sell his watch for cash at a price not less than ₹ 700. M sells it to D for ₹ 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

Answer

According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Question 3

Briefly explain different modes of creation of an agency relationship.

Answer

The law recognises various modes to create the agency, which are as follows:

(i) Agency by actual authority
(ii) Agency by ratification
(iii) Agency by ostensible authority
(iv) Agency by necessity
(vi) Actual authority and apparent authority

Question 4
What is Agency by Ratification?

Answer
Agency by Ratification: A person may act on behalf of another without his knowledge or consent. Later on such another person may accept the act of the former or reject it. If he accepts the act of the former done without his consent, he is said to have ratified that act and it places the parties in exactly the same position in which they would have been, the former had later's authority at the time he made the contract. Likewise, when an agent exceeds the authority bestowed upon him by the principal, the principal may ratify the unauthorised act.

Question 5
State with reason whether the following statement is correct or incorrect
Ratification of agency is valid even if knowledge of the principal is materially defective.

Answer
Incorrect: Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case. If the principal’s knowledge is materially defective, the ratification is not valid and hence no agency.

Question 6
State with reason whether the following statement is correct or incorrect.
No consideration is necessary to create an Agency

Answer
Correct: Unlike other regular contract, a Contract of Agency does not need consideration. In other words, the relationship between the Principal and Agent need not be supported by consideration as per Section 185 of the Contract Act, 1872.

Question 7
R is the wife of P. She purchased some sarees on credit from Q. Q demanded the amount from P. P refused. Q filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Q would succeed?
Problem on Agency: Problem as asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent, of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband’s credit for necessaries. But the legal presumption can be rebutted in the following cases:

(i) Where the goods purchased on credit are not necessaries.
(ii) Where the wife is given sufficient money for purchasing necessaries.
(iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.
(iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband’s credit for necessaries. This legal presumption can be rebutted only in cases (iii) and (iv).

Applying the above conditions in the given case ‘Q’ will succeed. He can recover the said amount from ‘P’ if sarees purchased by ‘R’ are necessaries for her.

Question 8

Ramesh instructed Suresh, a transporter, to send a consignment of apples to Mumbai. After covering half the distance, Suresh found that the apples will perish before reaching Mumbai. He sold the same at half the market price. Ramesh sued Suresh. Will he succeed?

Answer

An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances.

A typical case is where the ‘agent’ handling perishable goods like ‘apples’ can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here the agent acts in an emergency and acts as a man of ordinary prudence. In the given case Suresh had acted in an emergency situation and Ramesh will not succeed against him.

Question 9

Pick out the correct answer from the following and give reason:

A without B’s authority let outs B’s flat to C. Afterwards B accepts rent of the flat from C. It is an agency by:

1. holding out 2. estoppel 3. ratification 4. necessity
Question 10

Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ₹ 20 lakhs in the name of a nominee and then purchased it himself for ₹ 24 lakhs. He then sold the same house to Mr. Ahuja for ₹ 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

Answer

The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

1. repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.

2. claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover ₹ 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Question 11

P appoints A as his agent to sell his estate. A, on looking over the estate before selling it, finds the existence of a good quality Granite-Mine on the estate, which is unknown to P. A buys the estate himself after informing P that he (A) wishes to buy the estate for himself but conceals the existence of Granite-Mine. P allows A to buy the estate, in ignorance of the existence of Mine. State giving reasons in brief the rights of P, the principal, against A, the agent.

What would be your answer if A had informed P about the existence of Mine before he purchased the estate, but after two months, he sold the estate at a profit of ₹ 1 lac?

Answer

Agent’s duty to disclose all material circumstances & his duty not to deal on his own account without principal’s consent. (Sections 215 and 216 of the Indian Contract Act, 1872). The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction. On the other hand, Section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction.
Hence in the first instance, though P had given his consent to A permitting the latter to act on his own account in the business of agency, P may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.

In the second instance, P had knowledge that A was acting on his own account and also that the mine was in existence; hence P cannot repudiate the transaction under Section 215. Also, under Section 216, he cannot claim any benefit from A as he had knowledge that A was acting on his own account in the business of the agency.

**Question 12**

*Briefly explain the circumstances under which an agent may be held personally liable.*

**Answer**

**Personal liability of an agent:** The general rule is that only the principal can enforce, and can be held liable on, a contract entered into by the agent except when there is a contract to the contract. However, in the following cases an agent is personally held liable:

(i) When the contract expressly provides for his personal liability.
(ii) When the agent acts for a principal.
(iii) When he acts for an undisclosed principal.
(iv) When he acts for a principal who cannot be sued, e.g., minor.
(v) Where he signs a contract in his own name.
(vi) Where he acts for a principal not in existence e.g., promoter of a company under formation.
(vii) Where he is liable for breach of warranty.
(viii) Where he receives or pays money by mistake or fraud.
(ix) Where the agency is coupled with interest.

**Question 13**

*Choose the correct answer from the following:*

*An agency in which the agent himself has interest in the subject matter of agency is called:*

(a) Agency by estoppel
(b) Agency by holding out
(c) Agency by necessity
(d) Agency coupled with interest

**Answer**

(d) Agency coupled with interest
Question 14

Briefly explain when the principal is liable for the acts of an agent and state under what circumstances an agent is personally liable.

Answer

Principal's liabilities for Agents acts
1. When the agent exceeds his authority principal is liable for such acts.
2. Principal is bound by notice given to agent in the course of business.
3. A principal is liable where he has by words or conduct induced a belief in the contracting party that the act of the agent was within the scope of his authority.
4. The principal is liable for misrepresentation or fraud of his agent acting within the scope of his actual or apparent authority during the course of the agency business.

Agent is personally liable
1. When the contract expressly provides for the personal liability of the agent.
2. When the agent signs a negotiable instrument in his own name without making it clear that he is signing as agent.
3. Where the agent acts for a principal, who cannot be sued on account of his being a foreign sovereign, ambassador, etc.,

Question 15

A, who owes B ₹ 10,000, appoints B as his agent to sell his landed property at Delhi and after paying himself (B) what is due to him, to hand over the balance to A. Can A revoke his authority delegated to B?

Answer

According to Section 202 of the Indian Contract Act, 1872 where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. In the instant case the doctrine of agency coupled with interest applies. Therefore, A cannot revoke the authority delegated to B.

Question 16

Sunil borrowed a sum of ₹ 3 lakh from Rajendra. Sunil appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterwards, Sunil revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Sunil is lawful?
Answer

The given problem is based on the provision related to ‘agency coupled with interest’. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest. In the instant case the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

Thus, when Sunil appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favour of Rajendra and the said agency is not revocable. The revocation of agency by Sunil is not lawful.

Question 17

Comment on the following:

‘Principal is not always bound by the acts of a sub-agent’.

Answer

The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate’. (Latin version of this principle is, “delegates non potest delegare”). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub-agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

Question 18

Briefly explain the positions of sub-agent and substituted agent under the law of agency.

Answer

Sub-Agent: Sub agency occurs when an agent appoints another agent. The appointment of sub agent is not lawful, because the agent is a delegate and a delegate cannot further delegate. This is based on the Latin principle “delegates non potest delegare”.

The appointment of a sub-agent would be valid, if the terms of appointment originally contemplated it. Sometimes customs of trade may provide for appointment of sub agents. In both these cases the sub-agent would be treated as the agent of the principal.
Position of sub-agent vis a vis third parties where the sub-agent is properly appointed:

(a) **Where the sub-agent is properly appointed:** The principal is bound by his acts and is therefore responsible to third parties as if he were an agent originally appointed by the principal.

(b) **In the case of appointment without authority:** In this case the principal is not bound by the acts of sub-agent and sub-agent is not bound to the principal. It is the agent who is the principal of sub agent. Where the sub-agent purportedly acts in the name of first principal, the first principal may ratify the act of sub-agent. However, if the sub-agent acts in his own name or in the name of the agent who has without authority delegated to the sub-agent the business which is in fact that of the principal, the principal cannot ratify such acts of sub-agent.

**Substituted Agent:** Substituted agents are not sub-agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, than the second person is not to be treated as a sub-agent but only as an agent of the original principal.

For example, ‘A’ directs ‘B’ his solicitor to sell his property by auction and ‘B’ appoints ‘C’ an auctioneer. In this regard, ‘C’ is an agent of ‘A’ and not a sub-agent.

While selecting a “substituted agent” the agent is bound to exercise same amount of diligence as a man of ordinary prudence would and if he does so he will not be responsible for acts or negligence of the substituted agent.

For example, ‘X’ consigns goods to ‘Y’ a merchant for sale. ‘Y in due course employs an auctioneer in goods to sell goods of ‘X’ and also allows him to receive the proceeds of sale. The auctioneer becomes insolvent afterwards without handing over the proceeds. Here ‘Y’ will not be responsible to ‘X’ as he has discharged his duties as a man of ordinary prudence and diligence.

**Exercise**

1. **A agrees to work as an agent of B without remuneration. Later A refuses to work. Can B hold him guilty of breach of contract?**  
   [Hint: No, because agreement was without consideration. However, if A had actually acted, he would have acted as valid agent]

2. **D engaged E, an auctioneer, to sell some property for a commission of ₹15,000. E however received secretly ₹1,500 also as commission from purchaser. Discuss the rights of D and E.**  
   [Hint: D is entitled to recover both the amounts from E].

3. **P without Q’s authority, lends Q’s money to R. Later Q accepts interest on money from R. Discuss the rights of Q.**  
   [Hint: Loan contract is valid. Acceptance of interest by Q amounts to implied ratification.]
4. A person appointed by the original agent to act in the business of agency, but under the control of original agent, is known as-----------------

[Hint: Sub-agent]

5. Which of the following agency is irrevocable?
   (a) agency for fixed period.
   (b) agency for single transaction.
   (c) agency coupled with interest.
   (d) continuing agency.

[Hint: Option (c)]