

INDIAN CONTRACT ACT, 1872

Question 1

- (a) 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 Rs. 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. Ramashwmy stating that the price of Urid Dhall was sky rocketing to Rs. 50 Per. Kg. and he would not be able to supply as per original contract. The price of Urid Dhall rose to Rs. 53 on 09.12.06 Advise Mr. Ramaswamy citing the legal position.
- (b) Each subdivision carries one mark. Pick out the correct answer from the following:
- (i) In a contract of guarantee a person, who promises to discharge another's liability is called
- (a) Principal Debtor (b) Creditor
(c) Indemnifier (d) Surety.
- (ii) The delivery of goods by one person to another as security for the payment of a debt is called
- (a) Bailment (b) Pledge
(d) Mortgage (e) Hypothecation.
- Answer 'Yes' or 'No' to the following:
- (iii) In case of joint promise, the liability to pay the promise will devolve on any one or more promisors.
- (iv) Deposit of money in a Bank amounts to Bailment. (May 2007)

Answer

- (a) The stated problem falls under the head 'anticipatory breach of contract' defined in Section 39 of the Indian Contract Act, 1872. In this type of case, the promisee will be entitled to various damages namely:
1. Nominal damages
 2. Special damages

Law, Ethics and Communication

3. Damages for deterioration due to delay in performance
4. Exemplary damages.

The case law applicable here in *Fross vs. Knight*. As per details in the problem, price as contracted Rs. 40 per kg. on 10.11. 2006 rose to Rs. 50 per kg. as on 4.12.2006 and finally to Rs. 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 Rs. 10 per kg viz. Rs. 1,00,000.
 2. He could wait till 09.12.2006 and claim Rs. 1,30,000 i.e. Rs. 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.
- (b) (i) In a contract of guarantee, a person who promises to discharge another's liability to pay is called:
(d) surety
- (ii) The delivery of goods by one person to another as a security for the payment of a debt is called:
(b) pledge
- (iii) In case of joint promise, the liability to pay the promise will devolve on any one or more promisors. Yes
- (iv) Deposit of money in a Bank amounts to bailment. No

Question 2

- (a) 'A', 'B' and 'C' are partners in a firm. They jointly promise to pay Rs. 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.
- (b) (i) State whether the following statements are correct or incorrect:
- (a) A minor cannot be appointed as an agent.
 - (b) Where there are co-sureties a release by the creditor of one of them does not discharge the others.
- (ii) Pick out the correct answer from the following:
- (a) In case of void agreements, collateral transactions are
 - (1) Also void
 - (2) Unenforceable

Indian Contract Act, 1872

- (3) *Not affected*
- (4) *Illegal.*
- (b) *A contract of insurance is*
 - (1) *Contingent Contract*
 - (2) *Wagering Agreement*
 - (3) *Contract of guarantee*
 - (4) *Unilateral agreement.*

(November 2007)

Answer

- (a) When two or more persons make a joint promise, the promisee may in the absence of express agreement to the contrary, compel anyone or more of such joint promisors to perform the whole of the promise. In such a situation the performing promisor can enforce contribution from other joint promisors (Section 43 of the Indian Contract Act). If anyone or more joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal share. Hence in the instant case, A is entitled to receive (a) from C's assets - Rs.10,000 (1/5th of Rs. 50,000, (Rs 50,000 is the amount to be contributed by C being 1/3rd of Rs. 1,50,000) (b) from B - Rs. 70,000 (Rs. 50,000 being his own share + $\frac{1}{2}$ (50,000-10,000) i.e. Rs. 20,000 being one half share of total loss of Rs 40,000 due to C's insolvency). A can recover Rs. 70,000 from B.
- (b) (i) (a) **Incorrect.** According to Section 184 of the Indian Contract Act, 1872, any person can become an agent but a minor is not responsible to the principal.
- (b) **Correct.** Section 138 of the Indian Contract Act, 1872 lays down this rule.
- (ii) (a) (3) *Not affected.*
- (b) (1) *Contingent contract.*

Question 3

- (a) *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 Rs. 1 lac?

(5 Marks)

- (b) (i) *State with reasons whether the following statements are correct or incorrect:*
- (a) *In a contract of guarantee, forbearance by the creditor to sue the Principal Debtor discharges the surety.*

Law, Ethics and Communication

- (b) *A pledge of documents of title to goods by a mercantile agent is a valid pledge.*
- (ii) *Pick-up the correct answer from the following and give reasons:*
- (a) *If time is the essence of the contract and there is a failure to perform the contract by the specified time, the contract:*
- (1) *becomes voidable at the option of the promisee*
 - (2) *becomes unenforceable*
 - (3) *becomes void*
 - (4) *remains valid.*
- (b) *A contingent contract is:*
- (1) *valid*
 - (2) *void*
 - (3) *voidable*
 - (4) *illegal.*
- (May 2008)*

Answer

- (a) 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 can not claim any benefit from A as he had knowledge that A was acting on his own account in the business of the agency.

- (b) (i) (a) **Incorrect:** According to Section 137 of Indian Contract Act, 1972, the surety is not discharged in such a case.
- (b) **Correct:** It is one of the statutory exceptions to the general rule that a valid pledge can be created only by the owner. (Section 178 of the Indian Contract Act, 1872)

Indian Contract Act, 1872

- (ii) (a) (1) **is the correct answer** : Because if time is the essence of the contract it must be performed within a reasonable time otherwise it becomes voidable at the option of the promisee.
- (b) (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 4

- (a) *A gives to C a continuing guarantee to the extent of Rs. 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.

- (b) State with reasons whether the following statements are correct or incorrect:
- (i) *In case of alternative promise one branch of which is legal and the other illegal, the whole contract can not be performed.*
- (ii) *The contract of Insurance is not fully covered under the contract of Indemnity.*
- (c) *Pick-up the correct answer from the following and give reasons:*
- (i) *When a person without expressing his final willingness proposes certain terms on which he is willing to negotiate he makes:*
1. *Counter offer*
 2. *Standing offer*
 3. *Offer*
 4. *Invitation to an offer.*
- (ii) *The principle that no one shall be allowed to enrich himself at the expense of another is known as:*
1. *Quantum Meruit*
 2. *Nudem Pactum*
 3. *Quasi-contract*
 4. *None of these.*
- (November 2008)

Answer

- (a) 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.

Law, Ethics and Communication

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 arrangement. 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.

- (b) i. **Incorrect:** In accordance with the provision of the Indian Contract Act, 1872 as contained in under section 58 in the case of an alternative promise one branch of which is legal and the other illegal, the legal branch alone can be performed. On this point the decision given by court in *Mahadeo Prasad Singh Vs Mathura* 132 L.C. 321A is relevant in which the court has followed the above provision and decided accordingly.
- ii. **Correct:** Contract of Insurance is contract of indemnity, but not fully covered under Indian Contract Act, 1872 as the loss can happen due to any reason, while in the contract of indemnity, under section 124 of the Indian Contract Act, 1872 loss should occur due to conduct of promisor or some other person. Loss due to natural calamities are not covered in this definition as per the Indian Contract Act, 1872.
- (c) (i) **Correct answer is (1) i.e. "counter offer":** Any departure from the terms of the offer or any qualification vitiates the acceptance unless it is agreed to by the person from whom the offer comes. It is treated as a counter offer and amounts to rejection of the original offer.

Alternative Answer

The answer could be option (d) also, since an invitation to offer is not a final offer but a proposal of certain terms on which the person making the invitation is willing to negotiate.

- (ii) **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.

Alternative Answer

As the question concerns the principle 'Quantum Meruit', choice (i) can also be a right answer. The object of quantum meruit is also to restore what one person may have unjustly benefited at the expense of another. In those instance, where one party has benefited at the expense of another, quantum meruit comes into operation where a contract had been pre-existing but now has been nullified, while quasi-contract comes into operation in select enumerated circumstances, despite absence of specific contractual obligations between those parties.

Question 5

- (a) *A, the bailor, pledges a cinema projector and other accessories with Cine Association Co-operative 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. Examining 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?*
- (b) *State with reasons whether the following statements are correct or incorrect:*
- (i) *An agreement entered into with a minor may be ratified on his attaining majority.*
 - (ii) *Any variation in terms of contract made between the principal debtor and a creditor without the consent of the surety, automatically discharges the liability of the surety.*
- (c) *Pick out the correct answer from the following and give reasons:*
- (i) *An agreement to subscribe to or contribute a plate or prize of the value of Rs.500 or above to be awarded to the winner of a horse race is*
 - (1) *Void*
 - (2) *Valid*
 - (3) *Illegal*
 - (4) *Unenforceable*
 - (ii) *Substitution of new contract for an existing contract between the same parties is known as:*
 - (1) *Remission*
 - (2) *Alteration*
 - (3) *Rescission*
 - (4) *Novation*
- (June 2009)*

Answer

- (a) **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 pledge). 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.

Law, Ethics and Communication

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.

(b) (i) Incorrect

Reasons: 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*).

(ii) Correct

According to Section 133 of the Indian Contract Act, 1872 the surety's liability will be discharged if any variance is made, without his consent, in the terms of the contract between the principal debtor and the creditor.

- (c) (i) Answer No (2): 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.
- (ii) Answer No (4): Novation:** Substitution of new contract for an existing contract between the same parties is known as novation under Section 62 of the Indian Contract Act, 1872.

Question 6

- (a)** *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 Rs.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.*

Examining the provisions of Indian Contract Act, 1872, decide, whether the contention of A is valid?

Indian Contract Act, 1872

- (b) State with reasons whether the following statements are correct or incorrect.
- (i) If the pawnor makes a default in the payment of debt, or performance of duty, as agreed, the pawnee has a right to sell the thing pledged for which no reasonable notice of the sale is required.
 - (ii) An "agency coupled with interest" may be terminated, at the instance of the principal at any time.
- (c) Pick out the correct answer from the following and give reasons:
- (i) 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.
 - (ii) 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

(November 2009)

Answer

1. (a) 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 defining '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 is the decision of the Madras High Court in *Chinnaya Vs. Ramayya* (1882) 4 Mad 137., wherein it was 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 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.

Law, Ethics and Communication

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

- (b) (i) *Incorrect:* In accordance with the provisions of the Indian Contract Act, 1872 as contained in Section 176, if the pawnor makes any default in payment of the debt or performance of duty as agreed, the pawnee has a right to sell the thing pledged on giving the pawnor reasonable notice of the sale. A sale made by the pawnee without giving a reasonable notice will be void. A reasonable prior notice will confirm a good title on the buyer of such pledged goods.
- (ii) *Incorrect:* Agency coupled with interest is an agency where the agent has interest in the subject matter of agency. Such agency can not be terminated except where there is an express provision to cause prejudice to the interest of the agent. Also, an agency coupled with interest does not come to an end on the death, insanity or the insolvency of the principal.
- (c) (i) **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).
- (ii) **Answer: No. (4):** '*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 can not be performed by anybody other than the promisee. Hence, if A dies, the contract can not be enforced [illustration (b) given in Section 37 of the Indian Contract Act, 1872].