

Question 1

'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 Rs.50,000. One month later A revokes the guarantee, when C had lent to B Rs.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. Rs.5,000?(Nov. 2002)

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 Rs. 5,000 on default of B since the loan was taken before the notice of revocation was given to C.

Question 2

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. (November 2003)

Answer

Misrepresentation & the Problem: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is there:

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.

Problem:

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 amount to final acceptance of the sale [Long v. Lloyd, (1958)].

Question 3

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 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. (November 2003)

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 for any loss, destruction of the goods from that time (Section 161), 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 4

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.

(May 2004)

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 in 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 5

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.

(May 2004)

Answer

Delivery of Bags

According to Section 56 (Para 2) of 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 6

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 Rs. 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.
(November 2004)

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 Rs. 5 lakhs promised by Mr. Seth because it is an illegal agreement and cannot be enforced by law.

Question 7

What is meant by Anticipatory Breach of Contract?

Mr. Dubious textile enters into a contract with Retail Garments Show Room for supply of 1,000 pieces of Cotton Shirts at Rs.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 Rs. 350 per shirt. Examine the rights of the Retail Garments Show Room in this regard.
(November 2004)

Answer**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.

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 Rs. 50 per shirt i.e. the difference between Rs. 350/- (the price prevailing on 1st November) and Rs. 300/- the contracted price.

Question 8

Father promised to pay his son a sum of Rs. 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
(May 2005)

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 Rs.1 lakh from father for the reasons explained above.

Question 9

A hire a carriage of B and agrees to pay Rs.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 (May 2005)

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 10

M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 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 Rs.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. (May 2005)

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 Rs.1.25 lakhs (i.e. Rs.12.75 minus Rs.11.50 = Rs. 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 11

Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for Rs.20 lakhs in the name of a nominee and then purchased it himself for Rs.24 lakhs. He then sold the same house to Mr. Ahuja for Rs.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. (November 2005)

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 Rs.6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Question 12

Miss X, a film actress agreed to work exclusively for a period of two years, for a film production company. However, during the said period she enters into a contract to work for another film producer. Discuss the rights of the aggrieved film production company under the Indian Contract Act, 1872.
(November 2005)

Answer

Where a party commits a breach of negative term of a contract i.e., where he does something which he promised not to do, the aggrieved party can go to court which may issue an order restraining him from doing what he promised not to do. Such an order of the court is known as injunction. Since Miss X has agreed to work exclusively for the film production company for a period of two years, the aggrieved film production company can go to court and get injunction order restraining Miss X working for another film production company. A similar decision was taken in the case of *Warrior Bros vs. Nelson* (1937) 1 K.B. 209

Question 13

Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance in the light of the following:

- (i) *The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.*
- (ii) *The telegram of revocation and letter of acceptance both reached together.*

(May 2006)

Answer

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.

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 Ramanathan (the acceptor) is valid.
- (ii) If Ramaswami 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

Question 14

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 Rs. 1 lakh. After two months Ravi withdraws his guarantee. Upto the time of revocation of guarantee, Nalin had given to Ashok Rs. 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 Rs. 20,000 to Nalin ?*

(May 2006)

Answer

Discharge of Surety by Revocation (Problem): As per section 130 of the Indian 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 (i) Yes, Ravi is discharged from all the subsequent loan because it's a case of continuing guarantee. (ii) Ravi is liable for payment of Rs. 20,000 to Nalin because the transaction has already completed

Question 15

X, a minor was studying in M.Com. in a college. On 1st July, 2005 he took a loan of Rs. 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 Rs. 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 Indian Contract Act, 1872 decide whether B would succeed. (November 2006)

Answer

Yes, B can proceed against the assets of X. According to section 68 of 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 16

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 ?(November 2006)

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 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.
- (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 17

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 ? (May 2007)

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 18

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. (May 2007)

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, 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 19

A contracted with B to supply him (B) 500 tons of iron-steel @ Rs. 5,000 per ton, to be delivered at a specified time. Thereafter, A contracts with C for the purchase of 500 tons of iron-steel @ Rs. 4,800 per ton, and at the same time told 'C' that he did so for the purpose of performing his contract entered into with B. C failed to perform his contract in due course. Consequently, A could not procure any iron-steel and B rescinded the contract. What would be the amount of damages which A could claim from C in the circumstances? Explain with reference to the provisions of the Indian Contract, 1872. (May 2007)

Answer

The problem in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 73. Section 73 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. The leading case in this point is *Hadley v Baxendale*.

In "*Hadley vs. Baxendale*" it was decided that if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated.

In the instant case 'A' had intimated to 'C' that he was procuring iron steel from him for the purpose of performing his contract with 'B' Thus, C had the knowledge of the special circumstance. Therefore, 'A' is entitled to claim from 'C' Rs. 1,00,000 (difference between the procuring price of iron steel and contracted selling price to 'B') being the amount of profit 'A' would have made by the performance of his contract with 'B'. If A had not told C of B'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

Question 20

'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? (November 2007)

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. However in the given case X cannot be restrained by an injunction from doing so.

Question 21

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 Rs. 5,000 per month to N (the sister of the executant). 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. (November 2007)

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 22

X, Y and Z jointly borrowed Rs.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. (November 2007)*

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 by 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 promisees, 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 contracts). 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 23

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

- (i) *Kamala promises Ramesh to lend Rs. 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 Rs. 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 proceeding against each other without consent..*

(v) *Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.*
(May 2008)

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 contract 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 24

Ravi sent a consignment of goods worth Rs. 60,000 by railway and got railway receipt. He obtained an advance of Rs. 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 Rs. 60,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

(May 2008)

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 pledge, 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 Rs. 60,000 against Railway.

Question 25

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?
(May 2008)

Answer

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 necessities. 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 necessities for her.

Question 26

M lends a sum of Rs.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 Rs.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. (November 2008)

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 27

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. (November 2008)

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 28

"Good Girl" Soap Co. advertised that it would give a reward of Rs.1,000 who developed skin disease after using, "Good Girl" soap of the company for a certain period according to the printed directions. Miss Rakhi purchased the advertised "Good Girl" and developed skin disease in spite of using this soap according to the printed instructions. She claimed reward of Rs.1,000. The company refused the reward on the ground that offer was not made to her and that in any case she had not communicated her acceptance of the offer. Decide whether Miss Rakhi can claim the reward or not. Refer the relevant case law, if any. (November 2008)

Answer

General offer

Yes, Miss Rakhi can claim the reward of Rs.1,000 because the advertisement issued by the company is an offer made to the public in general and hence any one can accept and do the desired act. Where a general offer is of continuing nature, it will be open for acceptance to any number of persons until it is retracted. The Contract Act posits that performance of the conditions of a proposal is an acceptance of the proposal. So there is no need of actual and formal offer and the communication of an acceptance of an offer. Relevant case law is *Carlill v. Carbolic Smoke Ball Co.*