THE INDIAN CONTRACT ACT, 1872

SPECIAL CONTRACT

1. What is a contingent contract?

A contingent contract is a contract where performance depends upon some event which may or may not happen. The performance of a contingent contract becomes due only upon the happening of non happening of some future uncertain event which may or may not happen.

Example : X contracts to pay Y Rs. 10,000 if Y's house is burnt. This is a contingent contract as its performance is dependent upon an uncertain event i.e. burning of Y's house which may or may not happen.

2. How is contingent contract defined?

According to Section 31 of the Indian Contract Act 1872, " A contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen."

3. What are the essential of contingent contract?

1. There should be a contract to do or not to do something.
2. The happening of the event should be uncertain.
3. The performance of the contract must depend upon the happening or non-happening of some event.
4. The event on which the performance is to depend must be collateral or incidental to the contract.
5. The event must not be the mere will of the promisor.

4. What are the rules relating to a Contingent Contract?

1. Contingent **contract to do or not to do anything, if an uncertain future event happens**, cannot be enforced by law unless and until that event has happened. Conversely, contingent contract dependent on the happening of a certain event, can be enforced only on the happening of that event, can be enforced only on the happening of that event. It the event becomes impossible, such contracts becomes void as provided under section 32.

Examples:

(1) X entered into a contract with Y that, if he lives even after the death of Z he will buy the house of Z. The contract will enforceable only if Z dies during the life time of X.

(2) X contracts with Y to give him a new car when he marries P. P dies without being married to Y. The contract becomes void.

2. **Contingent contracts to do or not to do anything, if an uncertain event does not happen** can be enforced when the happening of that event becomes impossible and not before as per section 33.

Examples: X contracts to pay Y a certain sum of money if a certain ship does not return. The ship is destroyed in a fire. The contract can be enforced when the ship is destroyed.

3. Under **sec. 34,** if a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything which renders it impossible that he should so act within any definite time or other wise than under further contingencies.

Example : X agrees to pay Y a sum of money if Y marries Z. Y maries A. Now marriage of Y to Z seems to be impossible though it is possible that Y may marry Z after divorcing A. The contract will, however, be performed.

4. According to **Sec.35,** contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time, become void, if :- (i) at the expiration of the time fixed, such event has not happened, or (ii) before the time fixed, such event becomes impossible.

Example: X promises Y to pay him a certain amount, if a certain ship does not return within a year. The promise will be enforceable, if the ship does not return within a year, or is destroyed within a year.

5. Under **sec.36**, all contingent agreements to do or not to do anything if an impossible event happens are void. It is essential, whether the impossibility of the event is known or not known to the parties to the agreement at the time when it is made.

Examples: X promises Y to pay him a certain sum of money, if he marries X's niece. X's niece had died at the time if agreement. The agreement is void.

5. Distinguise between Wagering Agreement and Contingent Contract

Sr.	Basis	Wagering Agreement	Contingent Contract
1	Meaning	A wagering agreement is a promise to give money or money's worth upon the determination or circumstances of an uncertain event.	A contingent contract on the other hand is a contract to do or not to do something if some event collateral to contract does or does not happen
2	Reciprocal Promises	A wagering agreement consists of reciprocal promises.	A contingent contract may not contain reciprocal promise
3	Event	In a wagering agreement the uncertain event is the sole determining factor	In a contingent contract the event is only collateral.
4	Nature	A wagering agreement is essentially of a contingent nature	A contingent contract may not be of a wagering nature.
5	Type of	A wagering agreement is void.	A contingent contract is valid.

	contract		
6	Subject matter	In a wagering agreement the parties have no other interest in the subject matter of the agreement except in winning or losing of the amount of the wager. A wager is a game if chance.	It is not so in the case of Contingent contract.

Questions

Pick-up the correct answer from the following:

1. A contract of insurance is
   a. Contingent contract
   b. Wagering contract
   c. Contract of guarantee
   d. Unilateral agreement
2. A contingent contract is
   a. Valid
   b. Void
   c. Voidable
   d. Illegal
3. Distinguish between wagering contract and contingent contract
4. Briefly answer what is contingent contract and what are its essential?

QUASI CONTRACT

1. What is a Quasi Contract?

A quasi contract is a type of contract in which one party is bound to pay money in consideration of something done of suffered by the other party. Thus, no contractual relation exists between the parties, but law makes out a contract for them and such a contract is called a quasi contract. The main objective of the quasi contract is to prevent unjust enrichment or unjust benefit that is no man should grow rich out of another person's loss. This theory was originally propounded by Lord Manifield in the case **Moses Vs Macferlan**.

Example : X supplied certain goods to Y. Y receives and consumes the goods supplied. Y is bound to pay the price. Y's acceptance of goods constitutes an implied promise to pay.

2. How is Quasi Contract defined?

Though the Indian contract Act, 1872 does not define quasi contract, it calls them relation resembling those of contracts. However, a quasi contract may be defined as, " a transaction in which there is no contract between the parties; the law creates certain rights and obligation between them which are similar to those created by a contract."

3. What are the characteristics of a Quasi contract?

The Salient features of a quasi contract are as follows : -

1 The quasi contract is imposed by law as it does not arise from any formal agreement. It is a relation created by law between two persons and this relation is similar to the relation created by contract.

2 The basis of the quasi contracts is the principles of justice equity and goods conscience.

3 The quasi contract grants a right in one person and imposes the liability on the other person in relation with the advantage that he has already received.

4 The right granted by a quasi contract is available against a particular person or persons only and not against the whole world.

5 When an agreement is created under quasi contract and is not discharged, the aggrieved party is entitled to receive the compensation from the party who is not in default, as if the person has contracted to discharge it and has discharged the contract.

4. What are the various types of Quasi Contract?

Sec. 68 to 72 of the Indian Contract Act 1972 deals with the following types of quasi Contract –

(i) **Claim for necessaries supplied to person incapable of contracting (sec. 68):** If a person is incapable of concerning into a contract, or anyone whom he is legally bound to support is provided by another person with necessaries suited to his condition in life, the supplier is entitled to recover the price from the property of such incapable person.

Example : X supplies the wife and children of Y, a lunatic with necessaries suitable to their conditions in life. X is entitled to be reimbursed from Y's property.

(ii) **Payment by an interested person (Sec. 69) :** A person who is interested in payment of money which another is bound by law to pay, and who therefore pays it is entitled to be reimbursed by the other.

Example : The consignee suffered loss due to fire in the wagon during transit. The insurer made good the loss. The claim was allowed as per section 39.

(iii) **Obligation to pay for non-gratuitous act (sec. 70) :** Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other persons enjoys the benefit thereof, the latter is bound to make compensation to the former in expect of or to restore the thing so done or delivered.

Example: X, a trademan, leaves goods at Y's house by mistake; Y treats the goods as his own. He is bound to pay X for them.

(iv) **Responsibility of finder of Goods (sec. 71) :** Under Section 71 of the Act, a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

(v) **Liability for money paid or things delivered by mistake or under coercion (sec 72) :** At fast section 72 of the Indian Contract Act, 1872 provides that a person to whom money has been paid, or anything delivered by mistake or under coercion must repay or return it.

Example: A railway company refuses to deliver certain goods to the consignee, except upon the payment of illegal charge for carriage. The consignee pays the sum charged to obtain the goods to he is estimated recover so much of the charges as was illegal excessive.

CONTRACT OF INDEMNITY AND GUARANTEE

1. What is the meaning and definition of the term "Indemnity"?

The term "Indemnity" means to make good the loss or to compensate. It is an act of the party to compensate the other party for the loss suffered by him.

Sec. 124 of the Indian Contract Act defines a contract of Indemnity as:-

"A contract by which one party promises to save the other from the loss caused to him by the conduct of the promissior himself or by the conduct of any other person is called contract of Indemnity."

This can be explained by the following flow of Diagram:-

To Indemnify

↓

To make good the loss/compensate

Of → the promise

By → the promisor

Why → Because the promise has suffered some loss.

When → Due to the conduct of (a) promisor himself or (b) Any other third party

2. Who are the parties to the contract of indemnity?

1. The Promisor i.e. indemnifier
2. The promisee i.e. indemnified/ indemnity holder.

3. What is the object of the contract of Indemnity?

The object of the contract of indemnity is to protect the promisee against the anticipated loss

4. What are the characteristics of contract of indemnity?

1. There will be two parties indemnifier and indemnified.
2. Contract may be expressed or implied.
3. In this there is a promise to make the good the loss.
4. All essential element of Contract Act should also be present.
5. Enforceable only when promisee sustains or suffers any loss.

5. What are the rights of the indemnity holder?

The rights of the indemnity holder – as per Sec. 125 of the act, the indemnity – holder is entitled to recover from the promisor:-

1. All the costs of suit which he had paid in bringing or defending the suit provided:
    a. He worked under the authority of indemnifier and

b. He worked in such a way as a normal man would act in his own case

2. Any sum paid under the terms of any compromise of any such suit, if the compromise is not against to the order of the indemnifier and was one which it would have been prudent for the promisee to make.
3. All the damage which he may be forced to pay in any suit in respect of any matter to which the promise to indemnity is used.

6. What are the rights of an indemnifier?

Rights of Indemnifier are:-

1. Doctrine of subrogation
2. Right to the extent of indemnity.
3. Right to sue in the name of indemnified.
4. Right to avoid the loss beyond the scope of contract.

7. Which losses are recognised for compensation under a contract of indemnity?

1. Losses caused by act of promisor
2. Losses caused by act of 3rd party.

8. Which losses are not recognised for compensation under a contract of indemnity?

1. Losses caused by natural calaminity.
2. Losses caused by the act of promisee.

9. What is the meaning and definition of the term "Guarantee"?

Guarantee is an undertaking by a party to make good the loss caused to the other party by the conduct of third party.

In this type of contract, a promise is made to pay the amount or discharge the liability of a third party of his default.

According to Sec. 126 of the Indian Contract act " A Contract of guarantee is a contract to perform the promise or discharge the liability of the third person in case of his default."

10. Who are the parties to a contract of Guarantee?

1. Surety or Guarantee: - the person who gives guarantee
2. Creditor: - Person to whom guarantee is given.
3. Third party: - Principal debtor i.e. person on whose default guarantee is given.

11. What is the object of the contract of guarantee?

The basic objective of contract of guarantee is to grant securities to the creditor.

12. What are the essential of the contract of Guarantee?

Essential of the contract of guarantee:-

1. Three parties to contract are principal debtor, creditor and surety.

2. Three contracts occur in the contract of guarantee.
3. Since it is contract, it must contain all the essential facts of a contract.
4. Principal debtor is to disclose all the material facts to the guarantor.
5. Nature of liability – the liability of principal debtor is primary one and the liability of guarantor is secondary and dependent.
6. Guarantee should be given on the request of principal debtor.
7. There should be an existing debt and should be valid.

13. What are the various kinds of Guarantee?

Kinds of guarantee: -

1. Specific or simple guarantee: When a guarantee exist only for a single transaction.
2. Continuing guarantee: - When a guarantee extends to a series of transaction.
3. Retrospective guarantee: - When a guarantee is given for a existing debt.
4. Perspective Guarantee: - When a guarantee is given for a future debt or obligation.

14. What is a continuing Guarantee?

Sec. 129 of the act defined Continuing guarantee as, " a guarantee which extends to a series of transactions." Generally, indefinite numbers of transactions are dealt in continuing guarantee. Such guarantee may be in respect of future transactions during fixed period for example for one year.

The features of continuing guarantee are:

1. The guarantee is not exhausted by the first advance or credit or supply up to the pecuniary limit.
2. Revocation can be made by notice to the creditor in relation to future transactions.
3. Continuing guarantee is terminated by the death of the surety as regards the future transactions.

Revocation of Continuing Guarantee: Following are the circumstances in which the continuing guarantee can be revoked:-

1. By notice: According to sec 130 the continuing guarantee may be revoked at any time by the surety as to future transactions by due notice to the creditor.
2. By death: Death of the surety operated as revocation of the continuing guarantee with reference to the future transactions unless the contract otherwise provide.
3. By Variation in contract: If any variation is done in the terms of contract of guarantee between the creditor and the principal debtor without the knowledge of the surety, the contract of guarantee will be revoked.

4. By novation: The contract of guarantee will be revoked when the parties agree to substitute a new contract for the old contract or rescind or alter the old contract.
5. By creditor's act of omission: Any omission by the creditor which repairs the eventual remedy of the surety against the debtor amounts to revocation of the contract of guarantee.

15. What is the nature of surety's liability?

According to section 128 of the Indian contract act, the liability of the surety is co-extensive, with that of the principal debtor. In other words, the surety is liable for all those amounts, the principal debtor is liable for. The surety would not be liable, if the principal debtor is not liable on the principal debt. If the principal debt is unenforceable or illegal, the principal debtors, and surety are not liable. If the principal debtor is discharged by the creditor's breach, surety will not be liable.

The liability of surety us called as secondary or contingent, as his liabilities arises only whom default is made by principal debtor. Thus, as soon as the Principal Debtor defaults, the liability of surety begins and runs co-extensive with the liability of Principal Debtor. A suit can be filed by the creditor against the surety without suing Principal Debtor. The creditor is also not responsible to give notice of default to the surety unless it is expressly provided for.

16. Is surety a favoured debtor?

Surety is a favoured debtor as is evident in the following: -

1. Can recover from Principal Debtor
2. Liability of surety can in no case be more than principal debtor
3. He has to be given a notice before suing him.
4. Surety will not be liable where the debtor has obtained guarantee by misrepresenting the fact.
5. surety is liable only for the unpaid balance.

17. What are the rights of the surety?

Rights of a surety against the principal debtors:

1. Rights of subrogation (sec. 140) : After making a payment and discharging the liability of the Principal Debtor, the surety takes over all the rights of the creditors, which he can himself exercise against the Principal Debtor. This right of surety is called the right of subrogation. In this way, surety steps in the shoes of the creditors. The surety becomes liable to receive all the remedies which the creditors would have enforced not only against the principal debtor but also against all the person claiming against him.
2. Right of indemnity (sec. 141) : There is an implied promise to indemnity the surety between the surety and the Principal Debtor. This to Section 145, the surety is entitled to recover

from the Principal Debtor whatever sum he has correctly paid under the guarantee. The surety can recover the actual amount and interest both from the creditor. It is so because the surety is entitled to full indemnification.

Against the Creditors:

Section 141 deals with the rights provided to surety against the creditor :

1. Right to securities: As per the section, when the surety has paid up off the liabilities of the Principal Debtor to the creditor, he becomes entitled to receive all the securities which were given by the principal debtor to the creditor at the time when the surety ship contract was entered into.
2. Right to seek dismissal of employee: In the case of faithful guarantee, the surety can direct the creditor to dismiss the employee, whose honesty he has guaranteed, if the dishonesty of the employee is proved.
3. Right to set-off: Set off means, a counter claim of deduction from the amount of loans, which the principal debtor may possess against the creditor in the respect of same transactions.
4. The surety has a right, any time before the guaranteed debt has become due and before he is called upon to pay, required the creditor to sue the Principal Debtor. The surety will have to indemnify the creditor for any expenses of loss resulting there from.

Right against co-sureties:

When two or more sureties are guaranteed for debtors, they are called co-sureties. The rights are-

1. Right to share security gained from the creditor
2. Act to section 143, liability of co-sureties to contribute equally if there is no contract on the contrary.
3. Liability for equal limit (sec. 147) where different sums are guaranteed by the co-sureties, they have to contributes, they have to contribute to the maximum at guarantees by anyone.

18. How is a surety discharged?

Discharge of surety by the conduct of the creditor: -

Discharge of surety: According to sec 126, surety is a person who promises to take the responsibility to cover up the promise or discharge the liability of the third party in case of his default. When the liability comes to an end, a surety is said to be discharged.

Following are the cases through which the surety may be discharged from his liability by the conduct of the creditor: -

1. **Variance in terms of contract:** As per section 133, any variance, made without the opinion of the surety, in terms of the contract between the principal debtors and the creditor, discharges the surety as to transactions subsequent to variance.

2. **Discharge of principal debtors:** Under section 134, a surety is discharged by any contract between the principal debtors and creditors by which the principal debtors, released or by any act or omission of the creditor. The consequence or effect of this is the discharge of the principal debtor.

   If the principal debtor is discharged by operation of law or if the creditor omits to sue the principal debtor within the period of fixed time, the surety will not be discharge, even though the principal debtor is released.

3. **Compounding by creditor with the principal debtor** : According to section 135, if there is any contract between the principal debtor and the creditor, with which the creditor makes composition with, or promises to give time to or not to sue, the principal debtor discharges the surety, till the surety gives his consent to such contract.

   Under the following circumstances, the surety is not discharges under this head: -

   (i) Where a contract to give time to the principal debtor is made by the creditor with a third person and not with principal debtor (section 136)

   (ii) As per section 137, the surety would not be discharged by mere forbearance on the part of the creditor to issue the principal debtor.

   (iii) Where there are two sureties, a release by the creditor of one of them will not discharge the other; nor does it free the surety so released from his responsibility to the other sureties (section 138)

   (iv) By loss of security (sec. 141): The surety is discharged from his liabilities to the level of the value of securities if the creditors loses or without the consent of the surety pass with any security given to him at the time of the contract of guarantee.

   (v) The surety will be discharged where a guarantee is obtained by misrepresentation or concealment of the material fact.

Discharge by invalidation of the contract: According to the Indian contract act, 2983, a contract of guarantee may like any other contract be avoided. If it becomes void/ Voidable at the consent of the surety, section 142,143 and 144 lays down the provisions regarding the invalidation of guarantee the provision are as follows:

1. Guarantee obtained by misrepresentation (sec. 142): The contract becomes invalid, when the guarantee is obtained by means of misrepresentation of the material fact.
2. Guarantee obtained by concealment (sec. 143): When the guarantee is given by the creditor by means of keeping silence as the material part of the contract, the contract becomes invalid.

3. Failure of co-surety to join a surety (sec. 144): Where the condition is that the creditor will not act upon it until another person has joined in it as co-surety fails, the guarantee becomes invalid.

19. What is the difference between contract of Indemnity and Guarantee?

Sr.	Basis	Contract of Indemnity	Contract of Guarantee
1.	Meaning	According to section 124, a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a contract of indemnity.	According to section 126, a contract of guarantee is a contract to perform the promise or to discharge the liabilities of a third party in case of his default.
2	Parties to the contract	There are two parties i.e. The indemnifier and indemnified	There are three parties i.e. the creditors, the debtors and the surety.
3	Nature of liabilities	In the contract of indemnity, the liability of indemnifier is primary in nature	The liability of surety is collateral or secondary.
4	How the liability arises?	The liability of the indemnifier arises only on the happening of the contingence.	The contract of guarantee is for the security of the creditor.
5	Nature of contract	A contract of indemnity is for the reimbursement of a loss.	The contract of Guarantee is for the securities of the creditors.
6	Can sue or can not sue	The indemnifier cannot sue the third party even after making good the loss unless is an assignment in his favour.	The surety can, after paying the creditor, sue the principal debtor in his own name.
7	Basis of working	It is not necessary that the indemnifier should act at the request of the indemnified.	It is necessary that the surety should give the guarantee at the request of the debtor.
8	Number of contract	There is only one contract between the indemnifier and indemnified.	There are three contracts 1st between the creditor and principal debtor, 2nd the creditor and the surety and the 3rd between the surety and the principal debtor.

OBJECTIVE QUESTION

1. If a variance of contract between principal debtor and creditor is made without the consent of surety, it cannot absolutely discharge the surety's liability.

Ans. **Incorrect :** As per section 133, surety's liability will be discharged if any variance is made without his consent in terms of contract between the principal debtor and the creditor.

2. A surety is discharged from his liability where there is failure of consideration between the creditor and the principal debtor in a contract of guarantee.

Ans: **Correct:** According to provision of the Indian contract act, one of the essential element of a valid contract is the presence of the consideration. Thus, the surety will be discharged, in a contract of guarantee where there is a failure of consideration between the creditor and the principal debtor.

3. Guarantee obtained by concealment of material fact is invalid

Ans: According to section 143, when a guarantee is obtained by the creditor by means of keeping silence regarding some material part of circumstances relating to the contract, the contract is invalid.

4. Any variance made without the surety's consent in the terms of the contract, discharges the surety as to transactions subsequent to variation

Ans: **Correct:** According to section 133, any variance made without the consent of the surety in terms of the contract between the principal debtors and the creditor, the surety is discharged as to transactions subsequent to the variation. Surety's interest is always cared by the court. The duty of good faith is imposed upon the creditor. When the contract of guarantee is formed.

5. In a contract of guarantee, there are two contracts.

Ans. **Incorrect:** A triangular relationship develops in the contract of guarantee. There are three separate contracts and they are as follows: - (i) Between the creditor and debtor, (ii) between the surety and the creditor and (iii) an implied contract between the surety and the debtor that the debtor will indemnify the surety after the later has paid the creditors on the debtors default.

6. A Contract of guarantee is a tripartite contract

Ans: **Correct:** There are three contracts in the contract of guarantee. One between the creditor and principal debtor, second the creditor and the surety and the third between the surety and the principal debtor.

7. A contract of guarantee is required to be in writing

Ans: **Incorrect:** Section 126 of the Indian contract act, 1872 states that a guarantee may be either oral or written. Thus, it is not important that the contract of guarantee must be expressed in writing.

8. Release by the creditor of any one co-surety, discharges the other co-sureties.

Ans: **Incorrect:** According to section 138 of the Indian contract act, 1872 a release by the creditor of any one co-surety will not discharge the other co-sureties nor absolve the released co-surety from his responsibilities to other.

9. In the absence of any provision in the contract of guarantee in the contract, forbearance on the part of creditor to sue the principal debtor does not discharge the surety.

Ans: **Correct:** Under section 137 of the Indian contract act, 1872 mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not in the absence of any provisions in the guarantee to the contrary, discharges the surety.

10. 'A contract of Indemnity' is not a 'contingent contract'.

Ans: **Incorrect:** A contract of indemnity is a type of contingent contracts. Because, in these contracts, the performance depends upon the happening or non-happening of certain event that is loss is caused by the conduct of the promisor of any other person.

11. State with the reason the following statements are correct or incorrect:

The contract of insurance is not fully covered under the contract of indemnity

Ans : **Incorrect:** The contract of insurance is fully covered under the contract of indemnity. The meaning of indemnity is

- ❖ To make good the loss incurred by another person
- ❖ To compensate the party who has suffered some loss
- ❖ To protect a party from incurring a loss.

As per Indian contract act, 1872 the purpose of contract of indemnity is to protect the indemnity holder from any loss or is about to incur some loss.

PRACTICAL QUESTIONS

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. 5,000?

Ans: The problem as asked in the question depends on the provisions of the Indian contract act, 1872 as contained in section 130. The section relates to the revocation of a continuing guarantee as to future transactions which can be done in any of the two ways:-

a. **By notice**: By notice to the creditor, the continuing guarantee can be revoked at any time by the surety as the future transaction.

b. **B y death of surety:** In regard to the future transaction the death of the surety operates in the absence of any contract to the contrary, as a revocation.

The liability of the surety remains same for the previous transaction. Thus by using the above rule in the question, A is discharged from all the liabilities to C for any subsequent loan.

In second case the answer will change that A will be liable to C for Rs. 5,000 on default of B because the loan was taken before the notice of revocation was given to C.

2. Ravi becomes guaranteed for Ashok for the amount which may be given to him by Nalim 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 referring to the provisions of the Indian contract act,1872 – (i) Whether Ravi is discharged from his liabilities to Nalim for any subsequent loan. (ii) Whether Ravi is liable if Ashok fails to pay the amount of Rs. 20,000 to Nalim?

Ans: (i) According to sec. 130 if the Indian contract act,1872, a contract of guarantee may, at any time, be revoked by the surety as to future transactions, by notice to the creditor. In the given case, since Ravi has withdrawn his guarantee, he is discharged from his liabilities to Nalim for any subsequent loan.

(ii) Ravi is discharged from his liabilities to Nalim for the subsequent loan only. Ravi's liability upto his revocation stands as it is. Therefore, Ravi is liable if Ashok fails to pay the amount of Rs. 20,000 to Nalim.

3. 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 liabilities?

Ans: As per the provisions laid in 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 party 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 and not the principal debtor. Hence A is not discharged.

4. A gives to C a continuing guarantee to the extent of Rs. 5,000 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 payment shall be applied to the then existing debts between B and C. Examining the provision of the Indian contract act, decide whether A is liable on his guarantee given to C.

Ans: **Variance in terms and composition with principal debtor.(section 13 & section 135 of the Indian Contract Act, 1872)** According to section 133, where there is any variance in the terms

of contract between the principal debtor and creditor without surety's consent it would discharge the surety in respect of all transactions taking place subsequent to such variance. On the other hand, Section 135 provides that, if the creditors make a composition (i.e. settlement) with the principal debtor, the surety is discharged if the consent of surety is not obtained.

Hence, in the first instance, since B and C have varied the terms of the contract, without A's consent, it has discharged A from all the transactions taking place after such variation under section 133.

In the second instance, B and C have made settlement that the further supply of vegetables will be for cash and the payment shall be applied to the existing debts without the consent of A.

Hence, A is discharged in respect of all transactions taking place after the variation in the terms of contract. However, A will remain liable on his guarantee give to C for the existing debts i.e. is unable to settle off the debts existing before the variation, the liability of A will arise.

BAILMENT AND PLEDGE

1. What is meant by bailment?

   The term bailment is derived from the French word Bailer which means to deliver. Emytologically it means any kind of handing over. In legal sense, it involves charge of possession of goods from one person to another however without change of ownership for some specific purpose.

2. How is bailment defined?

   Bailment is defined u/s .146 as "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 direction of the person delivering them.

3. How many parties are involved in a contract of bailment?

   There are two parties:-

   (i) Bailor - the party/person who delivers the goods

   (ii) Bailee - the party/person whom the goods have been delivered.

4. What are the essential elements of bailment?

   1. There should be an agreement.
   2. Bailment of goods and goods only:- goods include those goods as defined under the sales of goods act.
   3. There should be delivery of goods: - the delivery may be actual or constructive.
   4. Delivery of goods for some purpose.
   5. Redelivery of the goods on accomplishment of purpose
   6. Transfer of goods i.e. change of profession and not the transfer of ownership.

5. How is bailment classified?

   Bailment may be classified under the following heads:

   1. **Voluntary and Involuntary bailment:** Voluntary bailment is the result of an express contract between the parties. Whereas, involuntary bailment develops by the operation of law, examples of involuntary bailment are in the case of finder of goods.
   2. **Gratuitous and non gratuitous bailment:** Where there is no consideration between the bailor and bailee on the transfer of goods, it is a gratuitous bailment.

   Example: A lends his book to his friend. Where some consideration passes between the parties it is non gratuitous bailment.

   3. **Bailment classified on the basis of benefits derived by parties**:
      a. Bailment for the exclusive benefit of the bailor (depositum)
      b. Bailment for the exclusive benefit of the bailee (commodtatum)

c. Bailment for mutual benefit (location –rei)

6. What are the duties of a Bailor?

1. **Deliver the goods[sec 149]:** The first duty of the bailor is to deliver the goods to be bailed to the bailee.
2. **Disclose the defects in goods[sec 150]:** The bailor is bound to disclose the defects in goods to the bailee of which he has knowledge.

Bailor's liability for defect in goods.

(i) In case of Gratuitous bailment: Bailor is liable for loss due to known but non disclosed defect.

(ii) In case of Non Gratuitous bailment: Bailor is liable for all losses due to disclosed as well as non disclosed defects.

3. **Bear expenses[sec 158]**

(i) In case of Gratuitous Bailment necessary expenses (both ordinary and extra ordinary) shall be borne by the bailor.

(ii) In case of Non Gratuitous Bailment, the ordinary expenses are to be borne by the bailee and extra ordinary by the bailor.

4. **Indemnify the bailee**.

(i) In case of Gratuitous Bailment: The Bailor shall indemnify the bailee in case, he terminates the bailment before due date. **[sec. 159]**

(ii) In case of defective title: The bailor is liable to indemnify the bailee in case of loss suffered by bailee due to his defective title. **[sec. 164]**

5. **Receive the goods:**

The bailor is bound to receive back the goods from the bailee when the term of bailment is over.

7. What are the rights of the bailor?

Rights of the bailor:

1. Right to indemnified by the bailee to loss by his negligence (sec. 152)
2. Avoidance of contract if the bailee has acted against the terms of contract (sec. 153)
3. Right to get goods separated (sec. 155,156,157)
4. To revoke the gratuitous bailment (sec. 159)
5. Right to return the goods (sec. 160)
6. To be indemnified against loss for non-returning of goods (sec. 161)
7. Rights to appreciation (sec. 163)

8. What are the rights and duties of the bailee?

Rights of the bailee:

1. **Enforcement of right:** The bailee can, by suit, enforce the duties of the bailor.
2. **According to Section 165:** If several joint owners of goods bail them, the bailee may deliver them back to, or according to direction of, one joint owner, without the consent of all, in the absence of any agreement to the contrary.
3. **Right to compensation (section 166):** If the bailor has no title to the goods and the bailee in good faith delivers them as per the direction of the bailor, the bailee will not be liable for such delivery.
4. **Right of the third person, claiming good bailed (section 167) :** If the person other than the bailor, claim the goods bailed, the bailee has the right to apply to the court for stopping the delivery of goods to the bailor and to decide title to the goods.
5. **Right of lien:** Right of lien is also enjoyed by the bailee.
6. **Right to sue:** A bailee can sue the person who has wrongfully deprived him of use or possession of the goods bailed.

Duties of the bailee:

1. To take care of the goods bailed (sec 151) (care means care taken by man of ordinary prudence under similar circumstances as he would take care of his own goods)
2. To compensate for the loss due to his negligence (sec. 152)
3. Not to act against the term of contract (sec. 153)
4. Not to make any anauthorised use of the goods.
5. Not to mix the goods bailed with his own goods.

9. What is the rule relating to mixture of goods?

Rules relating to the mixture of goods:

1. If the bailee mixed the goods with the consent of bailor (sec. 155): They shall have an interest in proportion to their respective shares.
2. If the goods are mixed without the consent of the bailee:
    a. If the goods are separable: (Sec. 156) : They shall have an interest in proportion to their respective shares but the cost of separation shall be beard by the bailee.
    b. If the goods are inseparable: (sec. 157) The bailee has to compensate the bailor for the loss incurred.

10. What are the rules relating to return of goods?

Rules relating to return of goods:

1. To return the goods according to the direction of the bailor (sec. 160)

2. If the goods are not returned as per the direction of the bailor the bailee is liable to compensate the loss (sec. 161)
3. To return any accretion to the goods.
4. The bailee is not liable to return the goods if it is claimed by any other person other than the bailor and the court order to it. (sec. 167)
5. To return the goods to any co-owners to it. (sec. 165)
6. Not to set up any adverse title.

11. What is bailee's lien?

By lien is meant a right to retain the goods until some debt or claim is settled. The bailee has a right to claim his lawful charges and if they are not settled, the bailee has a right to retain the goods until the charges due in respect of those goods are paid. This right of retaining the goods is known as bailee's lien.

Type of Lien:

1. General lien
2. Particular lien

1. **General lien:** It means right to return goods not only to demand arising to goods or goods retained but for a general bail of a/c. in favour of certain person. The provision of sec. 171 empowers certain categories of bailee to exercise general lien. This includes banker, factored, attorney of high court and policy banker. Thus bailee can retain all the goods of the bailor so on as anything's due to them unless there is a contract to contrary. Any other bailee can have a general lien only expressly so authorized.
2. **Particular lien:** (sec 170) it means the right to retain the particular goods in respect of which the claim is due. It exercises under the following conditions: -
    a. Some labour or skill has been exercised on the goods.
    b. Bailee has performed his service in full.
    c. There is no agreement for payment in future
    d. Some payment is made.
    e. Goods are in the possession of bailee.

12. How is bailment terminated?

Termination of Bailment: A contract of bailment comes to an end under the following circumstance:

1. If the contract of bailment is for a fixed period the bailment comes to an end as soon as the period is over.
2. If the bailment is for some purpose, it terminates as soon as purpose is fulfilled.

3. A gratuitous bailment terminates on the death of a bailor or bailee (sec. 152)
4. The bailment gets terminated, if bailee does something which is inconsistent with the terms of contract.
5. In case the bailment is gratuitous, the bailor may terminate the bailment even before the specified time.

13. What are the duties and liabilities of finder of goods?

Duties and liabilities of finder of goods:

1. The duties and liabilities of finder of goods are treated at par with bailee. According to sec. 71 of the Indian contract act, 1872 a person who finds the goods belonging to another and takes them into his custody, is subject to some responsibility as a bailee. He is forced to take as much care of the goods as a man of normal prudence would do under similar circumstances, take of his own goods of the same quality, quantity and value. He must also take all the necessary steps in finding out its true owner. If he does not find out the true owner and converts the property then he will be guilty of wrongful conversion. The goods will remain with the finder till the true owner is found out. In the following circumstances he can sell the goods or the right of the finder of goods: -
   (i) Where the owner is not trace with reasonable diligence.
   (ii) Where the owner is traced and he refuses to pay the lawful charges to the finder.
   (iii) If the lawful charged amount to two-third value of the thing.
   (iv) If the thing is in danger of perishing or loosing greater part of the value.
2. Right of lien.
3. Right to sue for reward.

14. What is pledge?

Pledge is a type of bailment. It is a transfer of goods as security for a payment of a debt or performance of promise. A contract by which the possession of goods is transferred as security is called pledge. The bailor in this case called the pledger or pawnor and the bailee is called the pledgee or Pawnee.

The essential elements of pledge according to section 172 are:-

1. **Delivery of goods:-** To constitute a pledge, delivery of goods to a pledgee is important. The delivery to the pawnee may be actual or constructive. A pledge involves a transfer of goods pledged and not of title. The ownership remains with the pawnor.
2. **The delivery of goods should be by way of security:**- There must be a valid consideration in the contract of pledge. The pawnor must give some property of goods by way of security for securing a loan from the pawnee.

3. **Purpose of pledge is security for payment of debt:** A pledge is made to secure debts and obligations by delivery of some security. Debts may be present, past or future. The pawnee becomes secured creditor in respect of such goods.

15. How many parties are involved in a contract of pledge?

There are two parties in pledge:

1. Pawnor - bailor
2. Pawnee – bailee

16. What are the rights of the pawnor?

1. **To receive back the goods pledged:** The pawnor has the right to get back the goods pledged by performing his promise or payment of certain sum of money.
2. **To redeem the goods before sale:** Even when the pawnor makes a default in the payment of debt or performance of promise he still reserves the right to redeem the goods pledged at any time before the pawnor sells them.
3. **Right to receive notice of sale:** The pawnor has a right to get a reasonable notice in case pawnee intends to enable him to pay off the debt and take back the goods.
4. **Goods to be in proper condition:** Pawnor has the right to see that the pawnor takes reasonable care of goods pledged.

17. What are the rights of pawnee?

Rights of the pawnee are as follows:

1. **Right of retainer (sec. 173):** To pawnee possess the right to hold goods pledged till he is paid not only the debt but also the interest along with the expenses incurred in relation to the possession or the presentation of the goods pledged.
2. **Right of retention in regard to subsequent advance (sec. 174) :** in relation to a contract to the contrary, the pawnee may not be entitled to retain the goods with respect to subsequent advances made by the pawnee, provided this has not been surrendered by a contract expressly.
3. **Right to extra ordinary expenses (sec. 175):** For the preservation of the goods pledged, the pawnee is empowered to receive from the pawnor the extra ordinary expenses.
4. **Right where pawnor makes a default (sec. 176) :** The following rights are available to the pawnor if default is made in the payment of the debt or performance of the promise:
    a. He may sell the property pledged on giving the pawnor a reasonable notice of sale.
    b. Bring suit against the pawnor upon the default in recovering the debt.

18. When can a non owner of goods pledge the goods?

A valid pledge can be made only by the owner of the goods. This rule is based on the maxim that no man can pass a better title than he himself has. The object behind this maxim is a safeguard the individual interest in the ownership of goods. A pledge made by any other person may not be valid. But section 178, 178-A and 179 provides the cases, where a pledge of goods made by a person who is not a real owner is valid and binding.

The non-owners are as follows:-

1. **Pledge by a mercantile agent:** According to sec. 178, a pledge by a mercantile agent will be valid, if the following conditions are fulfilled:-
    a. If the agent is in possession of goods or document of title to the goods
    b. If the possession is with the opinion of the owner.
    c. While making pledge the agent acts as in the ordinary course of business.
    d. The pawnee must act in the good faith and has no notice of the pawnor's defective title.
2. **Pledge by a person in possession of goods under a voidable contract:** According to section 178-A where a person gets a possession of goods under a voidable contract, the pledge created by him will be valid, if :-
    a. The contract has not been cancelled before the contract of pledge
    b. The pawnee acts in good faith and without notice of the pawnor's defect.
3. **A pledge by co-owner in possession:** A valid pledge of the goods can be made by one of several joint owners of goods in sole possession with the consent of rest of the owners.
4. **Pledge by a person having limited interest:** under sec. 179 it is laid down that where a pawnor has only a limited interest, the pledge will be valid only to the extent of that interest.
5. **Pledge by a seller or buyer in possession after sale:** After sale, a valid pledge can be made by the seller provided the pawnee must act in good faith. In case of a buyer same rule will be applied.

19. What are the difference between Bailment and Pledge?

Sr.	Basis	Bailment	pledge
1.	Definition as per act	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 direction of the person	The bailment of goods as security for payment of a debt or performance of a promise is called pledge. It is a kind of bailment. The bailor in this case known as pawnor and the bailee is called the pawnee

		delivering them	
2	As to purpose	In bailment the goods may be given for something to be done with them or for sage custody but not as security	Pledge is the bailment of goods for a specified purpose that is to provide a security for a loan or for the fulfillment of an obligation.
3	Right of sale	In case of bailment, there is not right of sale to the bailee. He may either retain the goods or sue for non payment of dues.	In case of pledge, the pledgee has right to sell the goods on default after informing the pledger.
4.	Right of using the goods	In case of bailment no such restrictions exists for a bailee	In case of pledge the pledgee has no right of using the goods pledged.
5.	Power holding goods	In bailment the goods remain with the bailee till the purpose of bailment is achieved.	In pledge, the goods may be allowed to remain with the pledger for some special purpose.

20. Distinguish between Bailee's particular lien and general lien

Sr.	Basis	Particular lien	General lien
1.	Retention of the goods	A particular lien gives a right to a person to retain only those goods in respect of which charge are due.	A general lien is a right to detain any goods belonging to another person for a general balance of amount.
2	Exercising labour and skill	A particular lien can be exercised only when some labour or skill has been expended on the goods which has improved their value.	A general lien can be exercised even though no labour or skill has been used in respect of the goods.
3	Right to have lien	A particular lien is given to a bailee.	A general lien can be exercised on by the persons named in section 171.

21. Distinguish between Gratuitous and Non-Gratuitous Bailment

Sr.	Basis	Gratuitous Bailment	Non – Gratuitous Bailment
1.	Consideration	No consideration is charged between the bailor and the bailee in gratuitous bailment	Consideration passes between the bailor and the bailee in non-gratuitous bailment.
2	Example	Lending of book to friend finding of the lost goods ext.	Where certain goods are kept in a godown for hire, or cloth given for

			tailoring against payment of charge.

DESCRIPTIVE QUESTIONS

❖ **Who is a bailor? What are the duties of a bailor?**

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 direction of the person delivering them (section 148 of the Indian contract act) in bailment the person who delivers the goods is called bailor for example a deposited good in cloak room at a railway station. The railway is liable for the goods as a bailee and A is the bailor.

❖ **Who can exercise the right of general lien?**

a. **Banker:** A banker can exercise the general lien on all goods and security deposited with him in his capacity as a banker.

b. **Attorney of high court:** An attorney is a person who acts legally for another i.e. a solicitor. He can use his powers on all paper and documents of his client until his professional fee and costs incurred by him are paid.

c. **Wharfinger:** A Wharfinger can exercise general lien as the goods bailed to him till his warfarage charged are paid.

d. **Policy Broker:** General lien can be exercised by the policy broker for any insurance amount due to him from the person who employed him to affect the insurance policy.

e. **Factor:** An agent hired with the possession of goods for the purpose of selling on behalf of him principal is a factor. General lien can be exercised on the goods of his principal for his balance of account against the principal.

❖ **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.**

The question asked above is based on the provisions of section 160 and 161 of the Indian contract act, 1872, as per section 160, it is the duty of the bailee to return of deliver the goods bailed according to the bailer's direction, without demand as soon as the time for which they were bailed has expired. If the bailee fails to do so, he is responsible to the bailor for the loss or destruction of the goods for that time (section 161)

Thus, by utilizing the above provisions in the given case, Mahesh is liable for the los, although he was not negligent but because of his failure to deliver the car within a reasonable time.

- **A hires 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.**

The problem asked in the question is based on section 150 of the Indian contract act, 1872

According to this section, if the goods are bailed for hire, the bailor is responsible for damages, whether he was or was not aware of this existence of such type of faults in the goods bailed. Hence by applying the above provision in the case stated above, B is liable to compensate A for the injuries suffered even if he has no knowledge of the defect in the carriage.

AGENCY

1. What is meant by agency?

Agency is a relationship between two parties created by an agreement. The relationship of agency arises, wherever a person called the agent has authority to act on behalf of another, called the principal in dealing with third party. Agency emphasizes that a person binds two other persons into a legal relationship.

2. What are the essentials of agency?

Essentials of agency: one of the specific contracts is agency. The essentials of such contract are as follows: -

1. **Basis of agency:** The essential features of the relationship between a principal and his agent is that the agent can render the principal who is answerable to a third party. Thus, agent is a person who represents another in dealing with third parties. Principal is the person for whom the act is done. As per the section as agent acts on his own behalf but always on behalf of another. The test of the agent is that his act binds the principal.
2. **Capacity to employ an agent:** according to section 183, a person who is capable of contracting can employ an agent lawfully. As per the law the person who is of a sound mind and is of the age of majority may employ an agent.
3. **Capacity to be employed as an agent:** any person can become an agent between the principal and the third person whether he has a contractual capacity or not. Section 184 does not permit the person to become an agent who is not of the age of majority and is of unsound mind.
4. **Consideration not required section 185:** Section states that in the law of agency no consideration is needed for its validity. Thus contract of agency is an exception to the rule of no consideration no contract.

3. Who is an agent?

According to sec. 182 an agent is a person employed to do any act for another or to represent another in dealing with third person.

4. Who may be an agent?

According to section 184, any person may be an agent.

5. Who is a principal?

A person who employs an agent or the person for whom the agent acts or the person who is represented by agent is called principal.

6. Who may be a principal?

According to section 183, a person who is of sound mind and of the age of majority can become a principal. Apart from these the following person may also appoint an agent:

1. Any corporate body
2. Court
3. Co-principals.

7. What is the rule of agency?

In the modern world, the owner of the business may not be able to attend personally all his business. To look after his business, he appoints certain person. These other persons are called agents. As per the Indian contract act, an agent is a person employed to do any act for another person or to represent another in dealing with third parties.

Thus, when a person acts as an agent of his principal, it is presumed under law of agency that the acts of an agent are the acts of the principal himself and he will be liable for such acts. The principal gets binded by the acts of his agent. The effect of the act will be same as done by the principal. Where the acts are to be performed of the personal nature, the rule given is not applied.

Statement of Rule: ***Qui facit per alium per se.***

What a person can do himself can get it done through an agent. Or Acts of agents are the acts of principal himself.

Exception:

1. Where the act requires personal skill.
2. Where an act has to be done by the principal as per provisions of law.
3. Whatever a person does through another does by himself.

8. What is the test of agency?

The test for determining whether a person is or is not an agent, is to find out whether the person has the capacity to bind the principal and make him responsible or liable to a third person by bringing him into legal relation with the third person. An agent is able to establish a privity of contract between the party and the principal. If all these points are proved then he is an agent otherwise not. The relationship of agency may be created by express or implied agreement.

Thus to test agency one has to check that:

1. The principal has conferred authority on the agent or not.
2. The principal is answerable to the third party for the act or not.

9. How is agency created?

Agency can take place by:

1. Express agreement (section 187)
2. Implied agreement

Implied agency includes in it:

(i) **Agency by estoppel:** Where a principal knowingly permits a person to act in a certain way in a business in his name of on his behalf. Such a principal is stopped from denying the authority of the supposed agent to bind him.

(ii) **Agency by holding out:** Where the person permits another by a long course of conduct to pledge is credit for a similar purpose. He is some cases without previous permission of his master this type of agency is said to be holding out.

(iii) **Agency by necessary:** Sometimes extra-ordinary circumstances require that a person, who is not an agent, should act as an agent for another. In such a case though they might not have an express or implied authority in favour of that person on account of the necessity that has a reason.

(iv) **Agency by ratification:** When the agent exceeds the authority given to him or acts without any authority, the principal may either disown such act or decide to adopt them. If he adopts them, then it is said that he has ratified the actor the agent and agency by ratification comes into existence.

(v) **Agency by operation of law:** When law enforces a person to become principal and agent.

10. What are the duties of an agent?

1. To carry out the work according to the instruction of the principal (sec. 211)
2. To carry out the work with reasonable care, skill and diligence (sec. 212)
3. To render accounts to the principal (sec. 213)
4. To communicate with the principal. (sec. 214)
5. Not to deal on his own account (sec. 215)
6. To pay the sum receipt for the principal (sec. 217 & 218)
7. To protect the principal in case of death and insolvency. (sec 209)
8. Not to set up an adverse title.
9. Not to make a secret profit.
10. Not to put himself in the position where interest and duty conflicts.
11. Not to delegate the authority. But in certain circumstances he can delegate authority to his sub agent or substitute agent.

11. What is the nature and extent of authority of an agent?

Nature and extent of authority of agent: Section 188 of the Indian contract act, 1872 grants to an agent an implied authority to do all that may be reasonably important for doing the act authorized by the principal. Hence, the authority of agent includes:

1. **Actual or real authority:** It is the authority on the agent by the principal. The authority granted may be either express or implied. When an authority given by the words spoken or a written it is an express authority. (sec. 186) when the authority is inferred from the circumstances of the cases than it is implied authority (Sec. 187). In words of sec. 188, an agent having an authority to carry on a business, has authority to do every lawful thing, which is necessary in order to do such act.
2. **Authority in emergency (section 189):** An agent permitted to do all such acts in emergency which a man of ordinary prudence would do for the purpose of protecting his principal from loss.

12. Who is a sub agent?

When an agent delegates a part of his authority to another person, this person is called a sub-agent. He cane be appointed by an agent only.

Appointment:

As per the general rule, an agent cannot appoint a sub-agent because the rood of agency lies on the relationship of confidence and trust, which the principal does not like to share with another person appointed by the agent who is unknown to him. Following are the cases in which an agent may appoint a sub-agent (section 190):-

1. When the principal knows the intention of an agent to appoint sub-agent
2. If there is a custom of trade to that effect.
3. Where it becomes essential to appoint a sub-agent under unforeseen emergencies
4. If the nature of the work makes appointment necessary.
5. Where the principal has authorized the agent to appoint a sub-agent.

The sub-agent is responsible for the acts to the agent and not to the principal. In case a fraud or willful wrong, the principal may hold him liable.

Legal consequences:

1. If the appointment is proper (section 192)
   (i) The principal is liable to the third person
   (ii) The agent will be responsible to the principal for the act of sub agent
2. If the appointment is improper: (section 193) : The principal is not liable to third party.

13. Who is a substituted agent?

Substituted agent: in the words of section 194, "Where an agent holding an express or implied authority to name another person and has named the another person accordingly such a person is not a sub agent but an agent of the principal fir such part of the business of the agency as is entrusted to him." The substituted agent is directly responsible to the principal. The privacy of contract is maintained between the principal and substituted agent.

For example: A authorizes B a merchant in Kolkata to reimburse the money due to A from C and co. B instructs D a solicitor to take proceeding against C & co. for the recovery of the money D is not a sub agent but is a solicitor of A.

While selecting such agent for his principal, an agent is empowered to exercise the same amount of freedom as a man of normal foresight would exercise in his own case. If he does this, he is not liable to the principal for the acts or negligence of the agent so selected. If the selection is done carefully than he becomes liable to the principal.

Thus the actual agent is not required to guarantee the integrity or solvency of the substituted agent.

14. What is the difference between sub-agent and substituted agent?

Sr.	Basis	Sub-agent	Substituted Agent
1.	Definition as per the act	Section 191 defines sub-agent as a person employed by and acting under the control of the original agent in the business of agency.	Section 194 defines substituted agent as an agent holding an express or implied authority to name another person to act for the principal in the business of the agency, had named another person accordingly such person is a Substituted agent.
2	Works under	A Sub agent does his work under the control of agent	A Substituted agent works under the instruction of the principal.
3	Delegation of duties	The agent not only appoints the sub agent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a Substituted agent.
4	Privity of contract	No privity of contract between principal and agent	Privity of contract is there between a principal and Substituted agent.
5	Duty ends	In case of sub agent the agent remains liable for the acts of the sub agent as long as sub agent continues	In the case of a Substituted agent, the agent's duty ends once he has named him.
6	Responsible to whom	The sub agent is responsible to the agent alone and is not responsible to the principal	A Substituted agent is responsible to the principal and not the original agent who appointed him.

15. What are the rights of Agent against the Principal?

1. Right of retainer (sec. 217)
2. Right to receive remuneration (sec. 219)

3. Right of lien (sec. 221)
4. Right of indemnification
5. Right of stoppage in transit.

16. What are the duties of principal to indemnify?

1. Against any legal consequences (sec. 222)
2. In good faith (sec.223)
3. Any loss sustained by agent due to principal negligence (sec. 225)

17. What are the rights of principal?

1. To recover damages
2. The duties of the agents are the rights of the principal.

18. What are the liabilities of principal and agent to Third parties?

1. **Named principal:** When the agent contracts as agent for a name principal, the principal is :
    a. Bound by all the acts of the agent
    b. Liable when the agent exceeds his authority
    c. Bound by the notice.
2. **Unnamed principal:** In this case the principal will be liable for the contract made by the agent unless there is a trade custom making the agents personally liable.
3. **Undisclosed Principal:** The agent become personally liable and ca be sue and be sued in his own name.

Personal Liability of agent:

The general rule is that an agent cannot be made personally liable for the contracts entered into by him on behalf of his principal, neither he is personally bound by them.

The circumstances under which an agent is personally liable to his principal acts are as follows:-

1. When he agrees with the concerned parties (sec. 230)
2. An agent who is not having any authority to act as an agent or who has exceeded the authority and the same has not been ratified by the principal, is personally liable for any loss beard by a third party (sec. 235)
3. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if in reality he was acting not as agent, but as principal. (sec.236)
4. When he is acting for a foreign principal.
5. Where the agency is coupled with interest that is the agent has interest in the subject matter of the agency.

6. When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
7. Where trade, usage or custom holds him liable in certain kinds of business.
8. Where the agent acts for a principal who cannot be sued an account of his being a foreign sovereign ambassador etc.
9. Where the agents acts for an undisclosed principal.

Where a Government servant enters into a contract on behalf of the Union of India is disregard of Article 299(1) if the constitution.

19. How is an agency terminated?

The reason for the termination of agency may be the act of the principal or the agent. The circumstances which results in the termination of an agency are as follows:-

1. **Revocation of authority by the principal:-** The principal may withdraw the authority of the agent before the agent has exercised his authority so as to bind the principal unless the agency is irrevocable (sec. 203) but if the act has started, the authority can be withdrawn subject to any claim which the agent may have for the breach of contract. (sec. 204)
2. **Completion of the business of agency:** An agency can get itself terminated by accomplishing the object for which agency was set up.
3. **Destruction of the subject matter:** If the subject matter of an agency is destructed, the agency comes to an end.
4. **Revocation of agency by the agent:** After giving a reasonable notice to principal, an agent by an express announcement get the agency terminated
5. **Death of insanity of either party:** The agency gets terminated, when the agent or the principal dies or becomes of an unsound mind.
6. **Insolvency of the principal:** The agency is put to an end by the insolvency of the principal.
7. **Dissolution or a firm or a company:** When a company/firm whether principal or agent gets dissolved the contract of agency with or by the firm/company automatically comes to an end.

20. What is the difference between special Agent and General Agent?

Sr.	Basis	Special Agent	General Agent
1.	Appointed to	A special agent is appointed to perform a special act or represent the principal in some particular transactions.	A general agent is one who is appointed to do all acts connected with a particular trade business or employment.
2	Authority	A special agent has limited authority	A general agent has authority to

		and he cannot bind the principal in any matter other than for which he is employed	bind his principal with all acts connect with trade business or employment.
3	When authority comes to an end?	The authority of the special agent comes to an end as soon as the act for which he is appointed to perform is completed	The authority of the general agent is continued until it is come out to an end.

22. What is the difference between an agent and servant?

Sr.	Basis	An agent	A servant
1.	Meaning	An agent is a person employed to do any act for another or to represent another in dealing with third party.	A servant is taken to be a person employed by a master to perform specified task in consideration of some amount.
2	Legal relation	An agent is employed to bring the principal into legal relation with third parties or to represent him in dealing with third party	No legal relationship is created between the employer and the third person.
3	Lawful instruction	An agent is bound to follow all the lawful instruction of the principal but he is not subject to direct control of the principal	A servant acts under the direct control and supervision of his employer
4	Liable for wrongful acts	A principal is liable for the wrongful acts of his agent done by the agent within the scope of his authority	An employer is liable for the wrong of his servant only when they have been done in the course of his employment.
5	Payment	An agent is paid by way of commission on the basis of work done	A servant is paid by way of salary or wages.
6	Serves	An agent may serve several principal at one time.	A servant usually serves only one master.

OBJECTIVE QUESTION

1. **Every person has a right to employ an agent lawfully.**

Ans: **Incorrect:** A person who has contracting power can lawfully employ an agent Section 183 states that the person who is major and is of sound mind can employ an agent.

2. **In case an agent exceeds his authority and the acts done by him and subsequently ratified by the principal, the ratification relates back from the date when the agent had acted upon.**

Ans: **Correct**

3. **No consideration is required to create an agency.**

Ans: **Correct:** According to section 185 of the Indian contract act, 1872 no consideration is required to create an agency. The exception to the general rule is 'No consideration, No contract'.

4. **In a contract of agency the principal cannot revoke the authority given to the agent after the authority has been partly exercised by him, for obligation arising in the course of agency.**

Ans: **Correct:** Section 204 of the Indian contract act, 1872 states that the principal cannot revoke the authority to the agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

5. **Ratification of agency is valid even if knowledge of the principal is materially defective.**

Ans: **Incorrect:** There cannot be a valid ratification by a person whose knowledge the person of the facts of the case is materially defective (section 198). If however the person desires to take the risk, he can opt to ratify without full knowledge of the facts.

SHORT QUSTIONS

1. **Write short notes on the agency of necessity.**

Sometimes under extraordinary circumstances, it is required that a person who is not really an agent must act as an agent of another. This type of agency is known as agency by necessity. For example, where a consignee did not take the delivery of a horse sent by rail and the railway company has to feed the horse, it was held that the railway company was an agent of necessity and was liable to recover this money from the owner. In such cases the agent acts under the pressing conditions and for the benefit of the principal.

Before inferring an agency of necessity, the following condition should be fulfilled:-

1. There should be actual and definite necessity for the creation of the agency.
2. There should be no possibility of obtaining the principal's instruction.
3. The agent acting in necessity should act bonafide and in the interest of parties concerned.

2. **Agency by ratification**

In the words of section 196 of the Indian contract act, 1872, it is provided that "where acts are done, by a person on behalf of another person, but without his knowledge or authority, he may elect to ratify or to disown such acts. If it is ratified, then it is called agency by ratification and the same effects will follow as if they had been performed by his authorities."

For example: A without having any authority of B acts as B's agent and enters into a contract of C. The contract will be binding on B, if he ratifies or approves the same.

Agency by ratification is an approval of a previous act or contract. If relates back to the date when the act was done by the agent. It is an authorization retrospectively and equivalent to antecedent authority.

DESCRIPTIVE QUESTION

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

In the normal case of agency a sub-agent is not appointed in it the agent delegates his power to the sub agent given to him by the principal. The general provision governing this is a delegatee can not delegate. But, there are certain exception in which an agent is empowered to appoint sub-agent.

By virtue of section 192 the principal is bound by and is held liable for the acts of the sub-agent if he is properly appointed. The relationship between the two treated as if the sub agent is appointed by the principal.

The principal shall not be binded by the acts of the sub-agent, if he is not properly appointed. In this the agent appointing the sub-agent is liable to the principal for the acts of sun-agent.

2. Pretended agent

The person who represent himself as an agent, but in reality he is not an agent is known as pretended agent. He himself will be liable for all his acts. The principal does not authorize him. He is personally responsible for the loses sustained by a third party relies upon the representation (section 235 of the Indian contract Act, 1872). In such contract, the third party has the right to claim the compensation from the pretended agent while the agent has no right to proceed against that person for the contract.

3. What are the circumstances in which an agent can delegate his authority?

According to the legal provision of the act an agent cannot delegate to another person without the permission of his principal. It is so because when the principal appoints an agent he depends upon his skill and integrity.

Following are the circumstances under which the agent may appointed sub-agent and delegate his authority to him. The circumstances are as follows:-

1. If there is a custom of trade to that effect.
2. Where unforeseen emergencies require the appointment of sub-agent.
3. The nature of work is such that the sub agent is needed.
4. Where the act to be does not require confidence.

5. Where the power of the agent can be conferred from the conduct of the principal and agent.
6. Where the principal allows the appointment of sub-agent.

   The principal us bound by acts of the sub-agent if he is properly appointed by the principal. To hold an express or implied authority from the principal the agent may be named as a substituted agent.

   These are the exception to the rule that the agent cannot delegate authority to another person.

4. What tests can be applied in determining whether a person is an agent of another? State may five circumstances where under an agent is personally liable to a third party for the acts during the course of agency.

The test for determining whether a person is or is not an agent, is to find out whether the person has the capacity to bind the principal and make him responsible or liable to a third person by bringing him into legal relation with the third person. An agent is able to establish a privity of contract between the party and the principal. If all these points are proved otherwise not. The relationship of agency may created by express or implied agreement.

5. "The relationship of principal and agent may be constituted by subsequent ratification by the principal

In the words of section 196 of the contract act, it is provided that, "where acts are done, by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If it is ratified, then it is called agency by ratification and the same effects will follow as if they had been performed by his authorities.

For example: A without having any authority of B acts as B's agent and enters in to a contract with C. The contract will be binding on B, if he ratifies or approves the same.

Agency by ratification is an approval of a previous act or contract. It relates back to the date when the act was done by the agent. It is an authorities retrospectively and equivalent to antecedent authority.

Essential elements of a valid ratification:

1. Ratification relates back to the date of the act of the agent.
2. In case of a company, the act to be ratified must be lawful and not void or illegal or ultravires.
3. At the time of contract, the principal must exist there.
4. The principal must have the full knowledge of all the material facts.
5. Third person must not suffer loss due to ratification.

6. Ratification must be communicated to the party who is sought to be bound by the act done by the agent.
7. Both at the time of contract and ratification the principal must have the contractual capacity.
8. Ratification must be done within a reasonable time of the act.
9. The whole transaction can be ratified.
10. Ratification can be of the acts which the principal had the power to do.

6. 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 them sold the same house to Mr. Ahuja for Rs. 26 Lakhs. Mr. Ahuja later comes to know the mischief or 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?

Mr. Ahuja is entitled to recover Rs. 6 Lakhs from Mr. Singh. According to section 215 and 216 of the Indian contract act, 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 points out that, either the agent has dishonestly concealed any material fact from him, or 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.

Thus Mr. Ahuja is entitled to recover Rs. 6 Lakhs From Mr. Singh as the amount of profit earned by Mr. Singh out of the transaction.

7. J, the owner of a fiat car wants to sell his car. For this purpose he hands over the far to P, a mercantile agent for sale at a price not less than Rs. 50,000. The agent sells the car for Rs. 40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the car. Decides giving whether J would succeed.

J would not succeed.

According to section 237, when an agent has without authority done acts or incurred obligation to third person on behalf of the principal, the principal is bound by such acts or obligation, if he has by his words or conduct induced such third person to believe that such acts and obligation were within the scope of the agent's authority.

In the case given I the question although P sold at a price below the reserved price. A buys the car in good faith without notice of any fraud. Thus J although sues A will not succeed.