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**SUGGESTED SOLUTION**

**CA INTERMEDIATE**

**SUBJECT- CORPORATE AND OTHER LAW**

**Test Code - CIM 8261**

**BRANCH - () (Date :)**

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**ANSWER-1****(10\*1 = 10 MARKS)**

1. A
2. A
3. B
4. B
5. C
6. C
7. D
8. C
9. C
10. B

**ANSWER-2****ANSWER-A**

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

In the given problem, 'M' and 'S' entered into arrangement by entering into a new contract without knowledge of the Surety 'A'. Since, the variance made in the contract is without the surety's consent in the existing contract, as per the provision, 'A' is not liable on his guarantee for the fruits supplied after this new arrangement. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there now and he is not liable on the altered contract because it is different from the contract made by him.

**(4 MARKS)****ANSWER-B**

- (i) According to **Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor**, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

**(3 MARKS)**

- (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.

(3 MARKS)

### ANSWER-3

### ANSWER-A

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

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

(3.5 MARKS)

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

(1.5 MARKS)

### ANSWER-B

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

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

(2 MARKS)

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

- (i) Guarantee obtained by means of misrepresentation.
- (ii) creditor obtained any guarantee by means of keeping silence as to material circumstances.
- (iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

(3\*1 = 3 MARKS)

#### ANSWER-4

#### ANSWER-A

Essential elements of a contract of bailment: **Section 148** of the Indian Contract Act, 1872 defines the term 'Bailment'. **A 'bailment' is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.** The essential elements of the contract of the bailment are : **(1 MARK)**

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

**(5\*1 = 5 MARKS)**

#### ANSWER-B

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

**(2 MARKS)**

#### ANSWER-C

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

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

**(2 MARKS)**

#### ANSWER-5

#### ANSWER-A

**Rights of Indemnity- holder when sued (Section 125):**The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor— **(1 MARK)**

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

**(3\*1 = 3 MARKS)**

It may be understood that the rights contemplated under section 125 are not exhaustive. The indemnity holder/ indemnified has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute, he is entitled to call upon his indemnifier to save him from the liability and to pay it off.

**(1 MARK)**

#### **ANSWER-B**

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.

**(5 MARKS)**