



J.K. SHAH[®]
TEST SERIES
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SUGGESTED SOLUTION
INTERMEDIATE M'19 EXAM
SUBJECT- BUSINESS LAW
Test Code – CIM 8049
(Date :)

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ANSWER-1**(15*1=15 MARKS)**

1. B
2. C
3. B
4. C
5. B
6. D
7. C
8. B
9. C
10. D
11. C
12. B
13. D
14. A
15. B

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

Difference between contract of bailment and contract of pledge :

1. Right of sale—In case of pledge, the pawnee (pledgee) can sell the goods and recover his debt, if pawnor (pledger) does not pay while in bailment the bailee can retain the goods and sue for damages, but he has no authority to sell the goods.
2. Purpose—Pledge is specifically for securing a debt, while bailment may be for any purpose e.g. for repairs, safe custody etc.
3. Right to use the goods—In case of pledge, pawnee cannot use the goods pledged but bailee can use the bailed goods if contract so provides. **(5 MARKS)**

ANSWER-B

According to Negotiable Instrument Act, where a cheque is not presented by the holder for payment within a reasonable time of its issue and the drawer suffers actual damage through the delay because of the failure of the bank, he is discharged from liability to the extent of such damage. In determining what reasonable time is, regard shall be had to the nature of the instrument, the usage of trade and bankers, and the facts of the particular case.

Accordingly, in the given case, the drawer is discharged from the liability to pay the amount of cheque to B. However, B can sue against the bank for the amount of the cheque applying the above provisions. **(5 MARKS)**

ANSWER-3

ANSWER-A

As per the provisions of the Negotiable Instruments Act 1881, acceptance may be either general or qualified. It is qualified when the drawee does not accept the bill according to the apparent tenor of the bill but attaches some condition or qualification which have the effect of either reducing his (acceptor's) liability or acceptance of his liability is subject to certain condition.

The holder of the bill is entitled to require an absolute and unconditional acceptance, otherwise he will treat it as dishonored.

However holder has to take consent of all prior party before accepting qualified acceptance. In case he accept qualified acceptance without obtaining consent of prior party, the party whose consent is not taken gets discharged from the liability arising out of negotiable instrument.

Thus, in this given case when the drawee undertakes the payment of part only of the sum ordered to be paid, it is a qualified acceptance and the drawer may treat it as dishonoured

unless agreed by him. If the Drawer (Nirav) agrees to acceptance, the drawee (Vijay) is responsible for a sum of Rs. 8000 only. **(5 MARKS)**

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

- a. 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
- b. claim from the agent any benefit, which may have resulted to him from the transaction

Therefore, based on the above provisions, Mr. Yadav is entitled to recover Rs.12 lakhs from Mr. Shekhawat being the amount of profit earned by Mr. Shekhawat out of the transaction. **(5 MARKS)**

ANSWER-4

ANSWER-A

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. A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor
2. 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.

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

- a. Thus applying the above provisions in the given case, Amit is discharged from all the liabilities to Chander for any subsequent loan.
- b. Answer in the second case would differ i.e. Amit is liable to Chander for Rs. 10,000 on default of Bikram since the loan was taken before the notice of revocation was given to Chander. **(5 MARKS)**

ANSWER-B

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

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

(5 MARKS)

ANSWER-5

ANSWER-A

Cheque in the electronic form

It means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature, as the case may be.

(1.5 MARKS)

Truncated cheque

It means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

(1.5 MARKS)

ANSWER-B

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Aman is not, but the surveyor is, responsible to Mr. Bhalla

(2 MARKS)