

# INDIAN CONTRACT ACT EXTRA QUESTIONS

**Q1. Explaining the provisions of the Indian Contract Act, 1872, answer the following: A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?**

**Ans.** As per Sec. 134 of the Indian Contract 1872, the surety is discharged by any act or omission of the creditor the legal consequence of which is the discharge of the principal debtor. Therefore, in the present case omission on the part of B to supply necessary material to be used in the construction of the house by A discharges the principal debtor i.e. A hence surety is also discharged. Release of the principal debtor is the release of the surety also.

**Q2. Explaining the provisions of the Indian Contract Act, 1872, answer the following: C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give me to B. Is A discharged from his liability?**

**Ans.** According to Sec. 136 of the Indian Contract Act 1872, where a contract to give me to the principal debtor is made by the creditor with the third person and not with the principal debtor, surety is not discharged.

In the present case, C enters into contract with X (third party) to give me to B i.e. the principal debtor then an i.e. surety will not be discharged from his liability.

**Q3. 'A' stands surety for 'B' for any amount which 'C' may lend to B from me to me 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' money already borrowed i.e. Rs.5,000?**

**Ans.** The problem as asked in the question depends on the provisions of the Indian Contract Act, 1872 as constrains in Sec on 130. The sec on relates to the revocation of a continuing guarantees as to future transactions which can be done in any of the two ways :-

1. By notice : By **notice to the creditor**, the continuing guarantee can be revoked at any me by the surety as to **future transactions**.
2. By 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 transactions.

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 is A will be liable to C for ` 5,000 on default of B because the loan was taken before the notice of revocation were given to C.

**Q4. Ravi becomes guarantor for Ashok for the amount which may be given to him by Nalin within six months. The maximum limit of the said amount is Rs. 1 lakh. After two months Ravi withdraws his guarantee. Up to the time of revocation guarantee. Nalin had given to Ashok Rs. 20,000.**

**Ans.** Referring to the provisions of the Indian Contract Act, 1872 decide –

- I. Whether Ravi is discharged from his liabilities to Nalin for any subsequent loan.
- II. Whether Ravi is liable if Ashok fails to pay the amount of Rs.20,000 to Nalin?
  - I. According to Sec. 130 of 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 Nalin for any subsequent loan
  - II. Ravi is discharged from his liabilities to Nalin for the subsequent loan only. Ravi's liability up to his revocation stands as it is. Therefore, Ravi is liable if Ashok fails to pay the amount of Rs.20,000 to Nalin.

**Q5. 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.**

**Ans.** The problem asked in the question is based on Sec on 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 the existence of such types 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.

**Q6. Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for Rs.20 lakhs in the name of a nominee and then purchased it himself for Rs.24 lakhs. He then sold the same house to Mr. Ahuja for Rs.26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so how much Explain.**

**Ans.** 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 (26 lakhs – 20 lakhs) from Mr. Singh as the amount of profit earned by Mr. Singh out of the transaction.

**Q7. J, the owner of a fiat car wants to sell his car. For this purpose he hands over the car 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. Decide giving reasons whether J would succeed.**

**Ans.** J, would not succeed. According to Section 237, when an agent has without authority done acts or incurred obligations to third person on behalf of the Principal, the Principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agents authority. In the case given in 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. The principal is bound by such obligation to third parties.

## **INDIAN CONTRACT ACT ADDITIONAL QUESTIONS**

Reason : The proprietor (the bailee) failed to take reasonable care of the goods bailed.



Subhash Ghai, a film producer, borrowed ₹ 10,00,000 from Amitabh Bachchan, a financier-distributor, and agreed to deliver the final prints of the film when ready. Was the agreement a pledge?



Solution : Section to which the given problem relates : Section 172

Decision : The agreement was not a pledge.

Reason : There was no actual transfer of possession.



On 1st January 1996 X borrows ₹ 1,00,000 from Y on the security of shares. On 1st June 1996, X borrows another sum of ₹ 50,000. X repays the first debt in full. Can Y retain the shares against his claim for the repayment of the second loan?



Solution : Section to which the given problem relates : Section 174

Decision : Y can retain the shares against his claim for the repayment of the second loan.

Reason : The pawnee's right of retainer over the pledged goods extends to subsequent advances also.



X directs Y to sell his estate for not less than ₹ 1,00,000. Y on looking over the estate before selling it, finds a mine on the estate which is unknown to A. Y buys the estate himself and hands over ₹ 1,00,000 to X who is quite satisfied with the price. Y resold the estate for ₹ 1,50,000 after three months. Discuss the legal position in each of the following alternative cases.

Case (a) Y informs X that he wishes to buy the estate for himself but conceals the discovery of the mine.

Case (b) Y informs X that there exists a mine in the estate but conceals the fact that he wishes to buy.

Case (c) Y informs that there exists a mine in the estate and he wishes to buy the estate for himself.



Solution : Case (a) : Section to which the given problem relates : Section 215 and 216.

Decision and Reason : On discovery that Y knew of the mine at the time he bought the estate, X has two rights –

- i) He may repudiate or adopt the sale at his option because Y concealed the existence of mine (Section 215)
- ii) If he adopts the sale, he is entitled to claim ₹ 50,000 because the principal is entitled to claim from the agent any benefit which may have resulted to him from the personal transaction in the business of the agency. (Section 216)

Case (c) : Section to which the given problem relates : Section 215 and 216.

Decision and Reason : X is bound by the sale.

- (i) X cannot repudiate the sale because Y has obtained X's consent and has not concealed any material fact. (Section 215)
- (ii) X is not entitled to claim ₹ 50,000 because Y has obtained X's consent. (Section 216)



X, being owner of a ship and cargo, authorises Y to procure an insurance on the ship. Y procures insurance on the ship as well as cargo. State the legal position in each of the following alternative cases:

Case (a) If two separate insurance policies are issued viz one for ship and another for cargo.

Case (b) If one comprehensive insurance policy is issued for both ship and cargo.



Solution : Section to which the given problem relates : Section 227

Decision : X is bound to pay the premium for the policy on the ship but not the premium for the policy on the cargo.

Reason : The principal is bound by the agent's authorised acts only where the agent exceeds his authority and the authorised acts can be separated from unauthorised acts.

Case (b) Section to which the given problem relates : Section 228.

Decision : X is not bound to recognise the transaction.

Reason : The principal is not bound to recognise the transaction where the agent exceeds his authority and the authorised acts cannot be separated from unauthorised acts.

Note : However, X may ratify the unauthorised act and accept the comprehensive policy. (Section 196).



X consigned 100 bags of wheat to Y who had advanced ₹ 10,000 to X. X authorised Y to sell the wheat and to pay himself ₹ 10,000 out of the proceeds of wheat. Later on, X directed Y not to sell the wheat. Ignoring X's directions, Y sold the wheat to recover ₹ 10,000. Is this sale binding on X?



Solution : Section to which the given problem relates : Section 202

Decision : This sale is binding on X.

Reason : X could not revoke his authority because the agency was coupled with interest.



X consigned 100 bags of wheat to Y and authorised Y to sell the wheat. Later on, Y advanced ₹ 10,000 to X which X failed to pay; X directed Y not to sell the wheat. Ignoring X's directions, Y sold the wheat to recover ₹ 10,000. Is this sale binding on X?



Solution : Section to which the given problem relates : Section 202.

Decision : No.

Reason : X could revoke his authority because the agency was not coupled with interest, the agent's interest arose after the creation of agency.

knew this. He asked one of his friends to buy a ticket for him. He was, however refused admission by the manager of the theatre. Held, there was **no** contract as the theatre company never intended to contract with 'S'.

21. **Foster Vs. Mackinnon** : If a person enters into a contract in the mistaken belief that he is signing a document of a different class and character altogether there is a mistake as to the nature of the contract and the contract is void. **Foster Vs. Mackinnon M**, an old man of poor sight indorsed a bill of exchange that it was a guarantee. Held there was no contract on the ground that the mind of the signer did not accompany the signature.
22. **Is the silence as to facts is not fraud** : Explanation to Sec. 17 also lays down that mere silence as to facts likely to effect the willingness of a person to enter into a contract is not fraud.

**Statutory Exception** : 1) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak.  : - F, sells by auction to D, his daughter who has just come of age, a horse which F knows to be unsound. here the relation between the parties would make it F's duty to tell that the horse is unsound. If F does not do so, it will amount to fraud. 2) Where silence, is, itself equivalent to speech.  : A says to B, "**If you do not deny it, I shall assume that the horse that you are selling me is sound**". If B says nothing his silence is equivalent to speech other exception. If a seller fails to inform the buyer as to a latent defect (i.e. defect known to the seller and not apparent on ordinary inspection) his silence amounts to fraud.

23. B spent some money on the improvement of market, at the desire of the directors. One Mr. D who was using the market promised to pay some money to B.



**Examine whether the following constitute a contract of 'Bailment' under the Provisions of the Indian Contract Act, 1872:**

- (i) X parks his car at the parking lot, locks it and keeps the keys with himself  
(ii) Seizure of goods by custom authorities



- (i) No. Mere custody of goods does not mean possession. For bailment to exist the bailor must give provision of the bailed property and the bailee must accept it (Section 148, Indian Contract Act, 1872 is not applicable)
- (ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore bailment exist and the Section 148 is applicable



**Sumit borrowed a sum of '3 lacs from Rajendra'. Sumit appointed Rajendra as his agent to sell his land and authorize him to appropriate the amount of loan out of the sale proceeds. Afterwards, Sunil revoked the agency. Decided under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Sunil is lawful?**



The given problem is based on the provision related to 'agency coupled with interest'. According to the Section 202 of the Indian Contract Act, 1872 an agency 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 Sumit appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan by its sale proceeds, interest was created in favour of Rajendra and the said agency is not revocable. The revocation of of agency by Sunil is not lawful.



**B owes C a debt guaranteed by A. C does not sue B for a year after the debt has become payable. In the meantime, B becomes insolvent. Is a discharge? Decide with the provision of the Indian Contract Act, 1872.**



Discharge of Surety : The question is based on provision of sec 137 of the Indian Contract Act, 1872 relating to discharge of surety. The Sec states that mere forbearance on the part of the creditor to sue the principal debtor and/or to enforce any other remedy against him would not, in the absence of any provision in the guarantee of the contrary, discharge the surety. In view of these provision, A is not discharged from his liability as a surety.



**Explaining the provision of the Indian Contract Act, 1872 answer the following:**

- (i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in construction. C guarantees A's performance of the contract. B does not supply the material as per agreement. Is C discharge from his liability?**
- (ii) C, the holder of an overdue bill of exchange drawn by A as surety for B and accepted by B, contracts with X to give time to B. Is A discharge from his liability?**



- (i) According to the Sec 134 of the Indian Contract Act, 1872 the surety is discharged by any contract between the creditor and the principal debtor, by which the principle debtor is released or by any act or omission for creditor, the legal consequence of which is the discharge of the principal of the principal debtor. In the given case the B omits to supply the timber. Hence C is discharge from his liability.
- (ii) According to sec 136 of the Indian Contract Act, 1872 where a contract to give time to the principal debtor is made by creditor with a third person and not with the principal debtor, the surety is not discharge. In the given question the contractor to give to principle debtor is made by creditor with a third person and not with the principal debtor, the surety is not discharge. In the given question the contract to give time to the principal debtor is made by the creditor with X who is third person. X is not principle debtor. Hence A is not discharged.



**Examine whether the following the constitute a contract of 'Bailment' under the provision of the Indian Contract Act, 1872:**

- (i) V parks his cars at parking lot, locks it, and keeps the keys with himself.**
- (ii) Seizure of goods by customs authorities.**



- (i) No. Mere custody of goods does not mean possession. For a bailment to the exist the bailor must give possession of the bailed property and the bailee must accept it (Section 148, the Indian Contract Act, 1872 is not applicable)
- (ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore bailment exists and section 148 is applicable.