

**TopYug Educations****CA FOUNDATION – BUSINESS LAWS****SUGGESTED ANSWERS FOR TEST - 4 (ICA – Topic 10)****Answer any 5 questions. Each question carries 4 marks each. Duration – 50 Mins**

1. Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872.

**Answer:**

**According to Section 56 of Indian Contract Act, 1872** when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently).

But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract.

**In this case,** Mr. Akhilesh could not deliver the bags as promised as promised to Shekhar because of strike by the workers.

**Question involved is** whether Akhilesh can exempted from the liability or not.

**Applying the above provision in the given case,** we understand that this difficulty in performance cannot be considered as impossibility of performance attracting Section 56 **and hence** Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract.

2. Explain the circumstances where under a party to a contract may be exempted from the performance of contract on the ground of 'Supervening impossibility' under the Indian Contract Act, 1872.

**Answer:****Supervening impossibility:**

When performance of a promise becomes impossible or illegal by occurrence of an unexpected, event or a change of circumstances beyond the contemplation of parties, is called supervening impossibility.

In case of supervening impossibility the contract becomes void.

**Circumstances:**

A party to a contract may be excused from the performance of his promise on the ground of 'supervening impossibility' under the Indian Contract Act, 1872 in the following circumstances.

**(a) Accidental destruction of the subject matter of the contract:** If the subject matter of the contract is destroyed by an accident both the parties are excused from the performance of the contract.

**(b) Non-existence or non occurrence of a particular state of things:** Non-existence or non occurrence of a particular state of things of the contract exempts the parties from the performance of the contract.

**(c) Incapacity to perform a contract of personal services:** In case of contract of personal service, disability or incapacity to perform, caused by the act of God e.g. illness, constitutes lawful excuse for non-performance of the contract.

**(d) Change in law:** Performance of a contract may also become impossible due to a subsequent change in the law. The law passed after the contract may prohibit performance of some act, which may be very basis of the contract. As such the contract is discharged due to subsequent impossibility and the parties become free from their mutual obligations.

**(e) Outbreak of war:** Contracts may be affected by war in a variety of ways, viz., (i) by emergency legislation controlling prices or otherwise relating to restriction of trade; (ii) by prohibiting or restraining transaction with alien enemy.

3. M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs.12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act.

**Answer:**

**Section 73 of the Indian Contract Act, 1872 provides** for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach.

It is further provided that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

**In the given case,** M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders.

Later, Shanti Traders procured the machinery from another manufacturer for Rs.12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract.

**Question involved is** about the amount of compensation which Shanti Traders can claim from M Ltd.,

**Applying the above principle of law to the given case,** M Ltd is obliged to compensate for the loss of Rs.1.25 lakhs (i.e. Rs.12.75 minus Rs.11.50 = Rs. 1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

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

**Answer:**

**Section 73 of the Indian Contract Act, 1872 provides that** when a contract has been broken the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

The leading case in this point is *Hadley v Baxendale*.

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

**In the instant case** 'A' had intimated to 'C' that he was procuring iron steel from him for the purpose of performing his contract with 'B'. Thus, C had the knowledge of the special circumstance.

**Question involved is** about the quantum of damages which A could claim from C.

**Applying the above provision in the given case,** we understand that the given case is about special damages as the party C was made aware about the contract which A had done with B.

**And therefore,** 'A' is entitled to claim from 'C' Rs.1,00,000 (difference between the procuring price of iron steel and contracted selling price to 'B') being the amount of profit 'A' would have made by the performance of his contract with 'B'.

If A had not told C of B's contract then the amount of damages would have been the difference between the contract price and the market price on the day of default

5. What is meant by Anticipatory Breach of Contract?

Mr. Dubious textile enters into a contract with Retail Garments Show Room for supply of 1,000 pieces of Cotton Shirts at Rs.300 per shirt to be supplied on or before 31st December, 2004. However, on 1st November, 2004 Dubious Textiles informs the Retail Garments Show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone upto Rs. 350 per shirt. Examine the rights of the Retail Garments Show Room in this regard.

**Answer:**

### Anticipatory breach of contract

Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived.

In such a situation the promisee can claim compensation by way of loss or damage caused to him by the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfillment of the promise by the promisor is over.

**In the given case,** Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1<sup>st</sup> November 2004 itself when it has time upto 31<sup>st</sup> December 2004 for performance of the contract of supply of goods.

**Applying the above provision in the give case, we understand that** it is anticipatory breach of contract.

**And Thus** Retail Garments show room can claim damages from Dubious Textiles immediately after 1<sup>st</sup> November, 2004, without waiting upto 31<sup>st</sup> December 2004.

The damages will be calculated at the rate of Rs.50 per shirt i.e. the difference between Rs.350/- (the price prevailing on 1<sup>st</sup> November) and Rs.300/- (the contracted price).

6. X, Y and Z jointly borrowed Rs.50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:
- (i) Y can recover the contribution from X and Z,
  - (ii) Legal representatives of X are liable in case of death of X,
  - (iii) Y can recover the contribution from the assets, in case Z becomes insolvent.

#### Answer:

**Section 42 of the Indian Contract Act, 1872** requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise.

In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several".

Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

#### As per the provisions of above sections,

- i. Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
- ii. Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- iii. 'Y' also can recover the contribution from Z's assets.