

**TopYug Educations****CA INTER – CORPORATE & OTHER LAWS****SUGGESTED ANSWER for TEST 6 – Indian Contract Act (Special Contracts)****Answer All the questions. Each question carries 5 marks each. Duration – 50 Mins**

1. W is the wife of H, who is Lunatic, purchases a diamond set of Rs.10 lakhs from a Jeweler on credit. Referring to the provisions of the Indian Contract Act, 1872, decide whether the Jeweler is entitled to claim the above amount from the property of H.

**Answer:**

**According to section 68 of Indian Contract Act 1872** "If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person."

**Provisions related with the modes of creation of agency relationship states** that Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent, of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries.

**In the given case,** W is the wife of H, a lunatic, who purchases a diamond set from a Jeweler on credit.

**Question involved is** whether the Jeweler is entitled to claim the above amount from the property of H.

**Applying the above provision in the given case,** we understand that diamond set, which is not necessaries is bought by the wife of a lunatic from a Jeweler on credit.

So, she can't pledge the credit of her husband and also the property of lunatic person cannot be used to repay for the credit availed.

**Therefore,** Jeweler is not entitled to claim the above amount from the property of H.

2. M lends a sum of Rs.5,000 to B, on the security of two shares of a Limited Company on 1<sup>st</sup> April 2007. On 15<sup>th</sup> June 2007, the company issued two bonus shares. B returns the loan amount of Rs.5,000 with interest but M returns only two shares which were pledged and refuses to give the two bonus shares. Advise B in the light of the provision of the Indian Contract Act, 1872.

**Answer:**

**As per the provisions of Section 163(4) of the Indian Contract Act 1872,** "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed."

**In the given case,** M lends Rs.5000 to B on the security of 2 shares of a company on which the company issued two bonus shares. B returns the loan amount with interest but M returns only 2 shares which were pledged and refuses to give 2 bonus shares.

**Question involved is** whether B is entitled to those 2 bonus shares.

**Applying the above provisions to the given case,** the bonus shares are an increase on the shares pledged by B to M.

**Hence,** M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also.

3. Manish advances to Narayan Rs.5 Lakhs on the guarantee of Piyush. The loan carries interest at 10% p.a. Subsequently, Narayan becomes financially embarrassed. On Narayan's request Manish reduces the interest to 6% p.a and does not sue Narayan for one year after the loan becomes due. Narayan becomes insolvent. Can Manish sue Piyush?

**Answer:**

**As per the provisions of The Indian Contract Act 1872**, any contract between the creditor and the principal debtor by which the creditor makes a composition or promises to give time to the debtor, discharges the surety unless he gives his consent.

**In the given case**, Manish advances to Narayan a sum of Rs.5 Lakhs at an interest @ 10% p.a. on the guarantee of Piyush.

Later, on Narayan's request reduces the interest to 6% p.a. and does not sue Narayan for one year after the loan becomes due. Narayan becomes insolvent.

**Question involved is** whether Manish can sue Piyush or not.

**Applying the above provisions in the given case**, we understand that the interest rate was reduced without taking the consent of Piyush, the surety which discharges him.

The reason that Narayan was not sued for a year cannot be the ground to make Piyush liable as he was already discharged.

4. A, the bailor, pledges a cinema projector and other accessories with cine association co-operative bank limited, the bailee, for a loan. A requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and also further promises to handover the possession of the same to the bank whenever demanded. Examining the provisions of the Act, decide whether a valid contract of pledge has been made between A, the bailor and Bank, the bailee?

**Answer:**

**As per the provision of sec 149 of The Indian Contract Act, 1872** (delivery to bailee and pledge), delivery of the goods to the bailee may be made by actual or constructive delivery or delivery by attornment to the bank. In such a case there is change in the legal character of the possession of goods though not in the actual or physical custody. Though the bailor continues to be in possession of the goods, it is the possession of the bailee.

**In the given case**, A, the bailor pledges a cinema projector with a bank and request the bank to allow the projector to be in his possession.

**Question involved is** whether it creates a valid contract of pledge between A and Bank.

**Applying the above provision in the given case**, the delivery of the goods is constructive i.e. delivery by attornment to the bailee (Pawnee) and the possession of the goods by A, the bailor is constructed as possession by bailee / Pawnee, the Bank.

A constructive pledge comes into existence as soon as the pawnor, without actually delivering the goods, promises to deliver them on demand. The transactions was, **therefore**, a valid pledge.

5. X appoints the following persons. State whether they can be called as agent of X:
- A to cook food for X and X's family on a monthly salary of Rs.1,000.
  - B to furnish kitchen in his house for Rs.10,000.
  - C to buy utensils for his kitchen for an agreed commission of 5% on purchases.

- d. Mrs. X to buy provisions for his kitchen without any commission on purchase.
- e. D to advice on financial matters.

**Answer:**

**Applying the provisions of Chapter X of The Indian Contract Act, 1872,** We can answer the following:

- a. No, because A is servant.
- b. No, because B is an independent contractor.
- c. Yes, because C is authorised to establish contract between X & a third party (i.e. supplier of utensils).
- d. Yes, because Mrs. X is authorised to establish contract between X and a third party (i.e. supplier of provisions). Consideration is not essential for creation of agency.
- e. No, because D is not authorised to establish contract between X and a third party.