PRESIDENCY UNIVERSITY, BENGALURU
SCHOOL OF LAW

Max Marks: 45 | Max Time: 55 Mins | Weightage: 15 % | **Set A**

TEST 1

II Semester 2016-2017 | Course: BLA 106 **Law of Contracts -II** | 21 February 2017

Instructions:

i. Write legibly

Part A

(5 Q x 2 M= 10 Marks)

1. Who is an Indemnifier?
2. Who is an Indemnified?
3. Who is a Principal Debtor?
4. Who is a Creditor?
5. Who is a Surety?

Part B

(3 Q x 5 M= 15 Marks)

6. Explain briefly the nature of a contract of indemnity?
7. Explain briefly the nature of promises involved in a contract of guarantee?
8. What are the limitations of section 124 of the Indian Contract Act, 1872?

Part C

(2 Q x 10 M= 20 Marks)

9. Read the below excerpts from a judgment. Answer the following questions:
   a. Whether the surety bond under these circumstances applies to past consideration also or not? Whether the contract of guarantee in this case valid? (10 Marks)

The first defendant who was not party in this appeal, approached the respondent-plaintiff (bank) and made application, dated 2-9-1976, for sanction of term loan for the purchase of a diesel metador (mini-bus) to eak out his livelihood by giving the mini-bus on hire. He agreed to discharge the loan amount with interest within three years as per Clause 17 of that application, and as per Clause 19 of that application the appellant-second defendant would stand as surety for repayment of the loan amount in regular monthly instalments. The respondent-plaintiff (bank) having processed the application agreed to advance to the first defendant the money required for the purchase of mini-van. Accordingly the respondent-plaintiff (bank) sanctioned a sum of Rs. 43,000/- to the first defendant for the purchase of mini-bus. Unfortunately the letter of sanction did not see the light in this suit though other documents were filed.

Be that as it may, after the first defendant completed all the formalities, the respondent-plaintiff (bank) disbursed of the amount to the first defendant on 28-10-1976. The appellant-second defendant executed the surety bond on the next day i.e., 29-10-1976. From the pleadings it is seen that the first defendant was paying the monthly instalments intermittently, that both himself and the appellant-second defendant acknowledged the debt on 27-7-1978 and that an amount of Rs. 45,054-39 ps. was due to the respondent-plaintiff (bank) as on 26-7-1978. Since the first defendant failed to repay the loan amount, the respondent-plaintiff (bank) issued legal notice, the copy of which is Ex. A11, to the appellant-second defendant. The appellant-second defendant acknowledged that legal notice under Ex. A14 and did not choose to give any reply to the respondent-plaintiff (bank). As far as the first defendant is concerned he remained ex prate throughout the proceedings. The plea of the appellant-second defendant in the written statement is that of a total denial except to the extent of execution of Ex.A7 surety bond. On the basis of the pleadings of the respective parties, the Additional Subordinate Judge, Tirupathi (trial Court) framed the following issues for trial:

i. Whether the agreement of guarantee dated 29-10-1976 is true, valid and binding on the second defendant?
ii. Whether the acknowledgment of debt dated 27-7-1978 is true, valid and binding on the second defendant?
iii. Whether the suit is barred by limitations?
iv. To what relief.

The respondent-plaintiff (bank), in order to prove its case, examined, PWs.1 and 2 marked Exs.A1 to A14. The appellant- second defendant, on his behalf, examined himself as DW1 but marked no document. By judgment, dated 24-6-1983, the trial Court, after considering the oral and documentary evidence, decreed the suit as against the first defendant but dismissed it (suit) as against the appellant-second defendant.

From the judgment it is seen that during the course of hearing the arguments, the appellant-second defendant raised alternative contention relying upon illustration (c) of Section 127 of the Act. As per illustration (c) to Section 127 of the Act if the consideration has not passed to the first defendant, the principal debtor contemporancously the surety bond has no legal force. In other words, if the surety bond is executed after passing of consideration, such an agreement is void. The trial Court, while decreeing the suit against the first defendant, the plea of the appellant-second defendant was found favour with the trial Court though it (trial Court) held against him on merits on the ground that the surety bond relates to past consideration to the first defendant, the principal debtor, the surety bond (guarantee agreement) was not valid one.

10. What are the rights of the surety according to the Indian Contract Act, 1872? Explain with various case laws. (10 Marks)

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TEST 2

II Semester 2016-2017 Course: **BLA 106 Law of Contracts -II** 21 March 2017

Instructions:

i. Write legibly

Part A

(5 Q x 2 M= 10 Marks)

1. Who is a Bailor?
2. Who is a Bailee?
3. Who is a Pawnor?
4. Who is a Pawnee?
5. Who is a Wharfinger?

Part B

(3 Q x 5 M= 15 Marks)

6. Explain briefly the contract of bailment?
7. When does bailment become a pledge?
8. Explain bailee's right of lien?

Part C

(2 Q x 10 M= 20 Marks)

Read the below excerpts from a judgment. Answer the following questions:

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 478 of 1957. Appeal from the judgment and decree dated August 17, 1954, of the Punjab High Court, Circuit Bench at Delhi, in Regular First Appeal No. 76 of 1952, arising out of the judgment and decree dated December 15, 1951, of the Court of Sub-Judge, 1st Class, Delhi in Suit No. 169 of 1949/409 of 1950.

Ganapathy Iyer and D. Gupta, for the appellant. Gurbachan Singh and Harbans Singh, for the respondent. 1959. October 28. The Judgment of the Court was delivered by SUBBA RAO J.-This appeal on a certificate granted by the High Court of Judicature for Punjab at Chandigarh is directed against its judgment confirming that of the Subordinate Judge, First class, Delhi, in a suit filed by the respondent against the appellant for the recovery of compensation in respect of non-delivery of goods entrusted by the former to the latter for transit to New Delhi. On August 15, 1947, India was

constituted into two Dominions, India and Pakistan; and soon thereafter civil disturbances broke out in both the Dominions. The respondent and others, who were in government employment at Quetta, found themselves caught in the disturbances and took refuge with their household effects in a government camp. The respondent collected the goods of himself and of sixteen other officers, and on September 4, 1947, booked them at Quetta Railway Station to New Delhi by a passenger train as per parcel way bill No. 317909. Under the said bill the respondent was both the consignor and consignee. The N. W. Railway (hereinafter called the Receiving Railway) ends at the Pakistan frontier and the E. P. Railway (hereinafter called the Forwarding Railway) begins from the point where the other line ends; and the first railway station at the frontier inside the Indian territory is Khem Karan. The wagon containing the goods of the respondent and others, which was 'duly seated and labelled indicating its destination as New Delhi, reached Khem Karan from Kasur, Pakistan, before November 1, 1947, and the said wagon was intact and the entries in the " inward summary." tallied with the entries on the labels. Thereafter it traveled on its onward march to Amritsar and reached that place on November 1, 1947. There also the wagon was found to be intact and the label showed that it was bound to New Delhi from Quetta. On November 2, 1947, it reached Ludhiana and remained there between November 2, 1947 and January 14, 1948; and the " vehicle summary " showed that the wagon bad a label showing that it was going from Lahore to some unknown destination. It is said that the said wagon arrived in the unloading shed at New Delhi on February 13, 1948, and it was unloaded on February 20, 1948; but no immediate information of the said fact was given to the respondent. Indeed, when the respondent made an anxious enquiry by his letter dated February 23, 1948, the Chief Administrative Officer informed him that necessary action would be taken and he would be addressed again on the subject. After further correspondence, on June 7, 1949, the Chief Administrative Officer wrote to the respondent to make arrangements to take delivery of packages lying at New Delhi Station, but when the respondent went there to take delivery of the goods, he was told that the goods were not traceable. On July 24, 1948, the respondent was asked to contact one Mr. Krishan Lal, Assistant Claims Inspector, and take delivery of the goods. Only a few articles, fifteen in number and weighing about 61 maunds, were offered to him subject to the condition of payment of Rs. 1,067 on account of freight, and the respondent refused to take delivery of them. After further correspondence, the respondent made a claim against the Forwarding Railway in a sum of Rs. 1,62,123 with interest as compensation for the non-delivery of the goods entrusted to the said Railway, and, as the demand was not complied with, he filed a suit against the Dominion of India in the Court of the Senior Subordinate Judge, Delhi, for recovery of the said amount. The defendant raised various pleas, both technical and substantive to non-suit the plaintiff. The learned Subordinate Judge raised as many as 15 issues on the pleadings and held that the suit was within time, that the notice issued complied with the provisions of the relevant statutes, that the respondent had locus standi to file the suit and that the respondent had made out his claim only to the extent of Rs. 80,000; in the result, the suit was decreed for a sum of Rs. 80,000 with proportionate costs.

The appellant carried the matter on appeal to the High Court of Punjab, which practically accepted all the findings arrived at by the learned Subordinate Judge and dismissed the appeal.

Learned Counsel for the appellant raised before us the following points: (1) there was no privity of contract between the respondent and the Forwarding Railway, and if he had any claim it was only against the Receiving Railway; (2) the suit was barred by limitation both under Art. 30 and Art 31 of the Indian Limitation Act and it was not saved by any acknowledgement or acknowledgements of the claim made within s. 19 of the Limitation Act; and (3) the notice given by the respondent under s. 77 of the Indian Railways Act, 1890, did not comply with the provisions of the said section inasmuch as the claim for compensation made there under was not preferred within six months from the date of the delivery of the goods for carriage by the Railway. The third point may be taken up first and disposed of shortly. Before the learned Subordinate Judge it was conceded by the learned Counsel for the defendant that the notice, Ex. P-32, fully satisfied the requirements of s. 77 of the Indian Railways Act, and on that concession it was held that a valid notice under s. 77 of the said Act bad been given by the respondent. In the High Court no attempt was made to question the factum of this concession; nor was it questioned by the appellant in its application for special leave. As the question

was a mixed one of fact and law, we would not be justified to allow the appellant at this very late stage to reopen the closed matter. We, therefore, reject this contention.

HEADNOTE: The respondent booked certain goods on September 4, 1947, with the N. W. Railway at Quebec in Pakistan to New Delhi. The wagon containing the goods was received at the Indian border station of Khem Karan on November 1, 1947, duly sealed and labelled indicating its destination as New Delhi. It reached New Delhi on February 3, 1948, and was unloaded on February 20, 1948, but no immediate information was sent to the respondent. On June 7, 1948, the respondent was asked by the E. P. Railway to take delivery of the goods lying at New Delhi station but when the respondent went there the goods were not traceable. Again, on July 24, 1948, the respondent was asked to take delivery of the goods when only a small portion of the goods were offered to him subject to the payment of Rs. 1,067 as freight but the respondent refused to take delivery. On August 4, 1949, the respondent filed a suit for Rs. 1,62,123/- with interest as compensation for non-delivery of goods against the Dominion of India. The trial court found that the E. P. Railway was guilty of negligence in handling the goods and decreed the suit for Rs. 80,000, and on appeal the High Court confirmed the decree. The appellant contended that there was no privity of contract between the respondent and the E. P. Railway and he could only have a claim against the N. W. Railway in Pakistan.

9. Identify all the issues in the above case. Classify them into issues of facts, issues of law and mixed questions of law and fact. (10 Marks)
10. Examine whether the appellant has any contractual liability towards the respondent. Substantiate your answer with reasons in law and facts.

(10 Marks)