

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: Law of Contracts-II
 (Specific Contracts, Partnership and Sale of Goods)
 Semester-III (Batch: 2014-19)

Mid Semester Test: August-2015

Date: 21st August, 2015

Duration: 2 hours

Max. Marks: 30

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

Part-A

Marks

Answer all Questions

- Q.1 The Bank of India, hereinafter referred to as 'The Bank' agreed to advance a loan to Mr. X, hereinafter referred to as 'The Borrower'. Mr. 'Y' stood as 'Surety'. (10)

The pertinent portion of the agreement of Guarantee entered into by the bank with the guarantor on 1 Feb 2008 reads as under....

The guarantor (Surety) hereby guarantees jointly and severally to pay the bank on demand all principal, interest, costs, charges and expenses due and which may at any time become due to the bank from the borrower (Principal Debtor) on accounts opened in respect of the said limits herein after called 'said accounts' down the date of payment and also on loss or damages, costs charges and expenses and in the case of legal costs as between attorney and client occasioned to the bank by reason of omission failure or default temporary or otherwise in such payment by the borrower or by the guarantor including costs (as aforesaid) of enforcement or attempted enforcement of payment (by suit or otherwise) or by a sale or realization or attempted sale or realization of any security for the said indebtedness or otherwise howsoever, or any costs (costs to be as aforesaid) charges or expenses which the bank may incur by being joint in any proceeding to which the bank may be made or make itself party either with or without others in connection with such securities or any proceeds thereof.

The guarantor hereby declares that this guarantee will be a continuing guarantee and shall not be considered as cancelled or in any way affected by the fact that at time the said account may show no liability against borrower or may even show a credit in its favour but shall continue to be guarantee and remain in operation in respects of all subsequent transactions.

On 1st August 2008 the guarantor revoked the guarantee given to the bank vide letter dated 1 August 2008, written to the Manager of the bank. However, subsequent to the revocation of guarantee by the guarantor, there were no transactions in respect of the loan between the borrower and the bank. The loan was finally advanced on 1st October 2008. Thereafter, upon failure of the borrower to pay the loan, the bank claimed money from the guarantor but the guarantor denied the payment. Therefore, a suit was filed for recovery of the loan by the bank against the borrower as well as the guarantor. The trial court decreed the suit against both, the borrower and the guarantor. The guarantor

made an appeal in the High Court against the decree passed by the trial court.

The appellant (guarantor), relying on section 130 of the Indian Contract Act 1872, argued that section 130 clearly provides for revocation of a continuing guarantee as to the future transactions by a notice to the creditor and, as in the present case, the guarantee was revoked long before the loan was given, therefore, the appellant was not liable to pay the decretal amount to the bank, accordingly, it was submitted that the trial court was not justified in decreeing the suit against the appellants. On the other hand, the submission of appellant was seriously contested by the bank. The main basis of the bank's contention was the agreement of guarantee itself.

Assuming yourself as one of the judges of the bench, decide the following issues with apt reasoning.

1. Can a surety enter into a binding contract to waive the benefits conferred upon him by section 130 of the Indian Contract Act?
2. Whether the trial court was justified in holding the appellant (Guarantor) liable to pay the decretal amount? Should the appellant be held liable to make the payment of the decretal amount?

Part-B

Answer all Questions

- Q.2 Differentiate between Pledge and Bailment (03)
- Q.3 Can Pledge be made by a person who is not the owner of the goods? What are the Rights of a Pawnee? (03)
- Q.4 Examine the duties of a Bailor and a Bailee towards each other. (03)
- Q.5 X was an auctioneer who was given cattle by Y to be sold at an auction. X followed the instructions and sold the cattle. But Y was not the owner of the cattle. The real owner of the cattle sued X for conversion and was successful. X had to pay damages to the owner. Can X recover these damages from Y? Support your answers with the relevant case laws and provisions of the Indian Contract Act 1872. (04)
- Q.6 Plaintiff (P) got a plot of land on lease from the Municipal Corporation of Mumbai. P allowed Defendant (D) to erect building on that land. D, in this course, incurred debt of Rs.5000 from building material supplier (K), twice. On both the occasion, P mortgaged part of the land to K. P, on D's request transferred the land to D, on the consideration that he (P) would be discharged of all the liabilities arising out of that land. D failed to adhere to his consideration. P filed a suit for discharge of liabilities on him, alleging D to be indemnifier. Whether the suit for indemnity was premature as P had not yet incurred any loss as such? Support your answers with the relevant case laws and provisions of the Indian Contract Act 1872. (04)
- Q.7 Before the Pawnee sells the pledged goods he is required to give to the pawner reasonable notice of his intension to sell. The requirement of 'reasonable notice' is a statutory obligation and therefore cannot be excluded by a contract to the contrary. Elaborate with the help of relevant case laws and provisions of the Indian Contract Act 1872. (03)
