Haryana Civil Judge (Mains) 2022: Civil Law I — Solution

Model answers to Civil Law I (Paper 1). Punjab and Haryana High Court, HCS (Judicial Branch) Main Examination held 20-22.05.2022. All questions are compulsory. Law as on the date of the examination.

Questions 1 to 5

Q1 (a) Amendment of pleadings, and amendment barred by limitation

The court may allow either party to alter or amend a pleading at any stage, on just terms, if the amendment is needed to decide the real questions in controversy (Order VI Rule 17). An amendment that would be time-barred if brought as a fresh suit is not refused as a matter of law; it is refused as a rule of caution, and allowed in the interests of justice where no injustice results.

Grounds on which amendment is allowed

- It is necessary to determine the real questions in controversy between the parties, and it avoids a multiplicity of suits.
- It corrects a mistake, supplies an omitted fact, clarifies a vague plea, or adds a ground or relief on the same cause of action; it is made in good faith.
- It can be compensated in costs: the other side suffers no injury that money cannot cure.

Grounds on which it is refused

- It substitutes a wholly new, inconsistent or different case or changes the nature of the suit.
- It takes away an admission that has already accrued to the other side, or it is mala fide or unduly delayed.
- Since the 2002 amendment, the proviso to Rule 17 bars an application after the trial has commenced unless the party shows that, in spite of due diligence, the matter could not have been raised earlier. Trial begins when issues are framed and evidence is led; amendment sought after evidence was filed was refused in *Vidyabai v Padmalatha* (2009) and *Rajkumar Gurawara v S K Sarwagi & Co* (2008).

Barred by limitation

The usual rule is that the court declines an amendment if a fresh suit on the new claim would be barred on the date of the application (*Revajeetu Builders v Narayanaswamy & Sons* (2009)). But limitation is a factor in the exercise of discretion, not a bar on the power: the Supreme Court held in *Leach & Co v Jardine Skinner & Co* (1957) that the court may allow it where justice requires. So the amendment is allowed when it only clarifies or particularises the existing claim, does not introduce a new cause of action, and does not deprive the opponent of a vested defence of limitation; it is refused when the new relief is time-barred and substantially different (adding specific performance to a suit for injunction years later was refused).

Conclusion: amendment is liberal before trial and strict after it; a time-barred new claim is allowed only in exceptional cases, never to defeat an accrued right of limitation.

Q1 (b) Grounds on which an appellate court sets aside the trial court's judgment

A first appeal lies on facts and law (section 96); the appellate court may reverse, vary or remand under Order XLI. A second appeal lies only on a substantial question of law (section 100).

- **Error of law:** wrong provision, wrong burden of proof, wrong construction of a document, or a misapplied binding precedent.
- **Error of fact:** findings that are perverse, rest on no evidence, ignore material evidence or admissions, or admit inadmissible evidence. The first appellate court is the final court on facts and must itself weigh the evidence and give reasons on every issue.
- **Jurisdiction:** the court had no territorial, pecuniary or subject-matter jurisdiction (section 21 allows objections to place and value only if taken early); a decree by a court without jurisdiction is a nullity.
- **Procedural illegality that caused prejudice:** denial of hearing, no issues framed, an ex parte decree on defective service, refusal of a necessary party's impleading. Section 99 and section 107 stop reversal for defects that did not affect the merits or jurisdiction.

Orders the appellate court can make

- Reverse the decree and itself decide (Rule 33 allows any decree that ought to have been passed, even in favour of a non-appealing party).
- Remand: Rule 23 where the suit was decided on a preliminary point and the finding is reversed; Rule 23A where a retrial is necessary; Rule 25 to frame issues and take a finding from the trial court.
- Take additional evidence under Rule 27 only if the trial court wrongly refused evidence, or the appellate court itself needs it to pronounce judgment.

Conclusion: an appeal succeeds on a substantial error of law, a perverse or unreasoned finding, want of jurisdiction, or a procedural defect that prejudiced the appellant.

Q1 (c) Objections of a judgment-debtor to execution of a decree for immovable property

The judgment-debtor may object only on grounds going to the executability of the decree or to its satisfaction, and not on the merits of the decree itself. All questions between the parties relating to execution, discharge or satisfaction are decided by the executing court under section 47.

- **Nullity:** the decree was passed by a court without inherent jurisdiction. An executing court cannot go behind a decree for error, but can refuse to execute a nullity.
- **Satisfaction or adjustment:** the decree has been satisfied, compromised or adjusted out of court; payment or adjustment must be certified to the court (Order XXI Rule 2).
- **Limitation:** execution is time-barred; the period is twelve years from the date the decree becomes enforceable (Article 136, Limitation Act 1963), subject to fresh starting points on part-payment and on successive applications.
- **Not executable as it stands:** the decree is vague, conditional on something not performed, has been stayed, or the decree-holder is not the person entitled; or the decree has been set aside, reversed or modified in appeal.
- **Property:** the property delivered is different from that decreed; or the judgment-debtor is not in possession and a third person holds in his own right.

Possession and resistance

The decree is executed by delivery of possession (Order XXI Rule 35); where a tenant or occupier has a separate right, possession is given by affixing a copy of the warrant and proclaiming it to him (Rule 36). A third person who resists or is dispossessed may apply under Rules 97 to 101, and the court decides all questions including right, title and interest (Rule 101), the order being treated as a decree. A transferee pending the suit is bound and cannot resist (Rule 102). The judgment-debtor may also seek stay of execution pending an appeal or application for setting aside the decree (Order XLI Rule 5; Order XXI Rule 29).

Conclusion: objection lies on lack of jurisdiction, satisfaction, limitation and non-executability; the merits of the decree cannot be reopened in execution.

Q2 (a) Ex parte decree: meaning and remedies

An ex parte decree is one passed against a defendant who was absent when the suit was called on for hearing, after the court has proceeded in his absence (Order IX Rule 6). The defendant has five remedies.

Remedy	Provision and conditions
Application to set aside the decree	Order IX Rule 13: before the same court, if the summons was not duly served or he was prevented by sufficient cause from appearing; the decree is set aside on terms as to costs or payment into court. Limitation: thirty days from the decree, or from knowledge where summons was not duly served (Article 123); section 5 can condone delay. The proviso bars setting aside merely for irregular service where he had notice and time to appear.
Application to set aside the order for ex parte hearing	Order IX Rule 7: at or before the next hearing, on showing good cause for non-appearance, he is allowed to join the proceedings.
Appeal	Section 96(2): appeal against an ex parte decree on the merits (and on the ground that the ex parte hearing was wrongly ordered); appeal against rejection of the Rule 13 application lies under Order XLIII Rule 1(d). The Explanation to Rule 13 bars the Rule 13 application once the appeal has been decided on merits, so the two cannot both be run to the end.
Review	Section 114 and Order XLVII, on discovery of new evidence, error apparent or other sufficient reason, within thirty days (Article 124).
Suit	A separate suit lies to set aside the decree only for fraud on the court or collusion.

The court looks at "sufficient cause" liberally when the application is prompt and the absence is not mala fide. Stay of execution may be sought along with the application.

Conclusion: the principal remedy is Order IX Rule 13 within thirty days; the defendant chooses between it and an appeal, remembering the Explanation to Rule 13.

Q2 (b) Reward for finding the watch: B's claim against A

B cannot recover the reward of Rs 10,000. A public offer of a reward is a proposal that can be accepted only by a person who acts on it, knowing of it; B performed the act without knowing of the offer, so there was no acceptance and no contract.

- **Issue:** can a person who performs the condition of a general offer without knowing of it sue for the reward?
- **Rule:** a general offer to the world becomes a contract when someone performs the conditions, and "performance of the conditions of a proposal" is acceptance (section 8, Indian Contract Act). Acceptance presupposes knowledge of the proposal: a person cannot accept what he does not know. In *Lalman Shukla v Gauri Dutt* (1913) a servant who traced a missing boy before he learnt of the reward was held not entitled to it.
- **Application:** A advertised in the newspaper; B found and returned the watch while carrying A's goods, unaware of the notice. His act was motivated by the carriage, not by the offer. Learning of the reward afterwards cannot convert the earlier act into acceptance.
- **Section 168:** it allows a finder of goods to sue for a specific reward offered by the owner, but it presupposes a finder who acted on the offer, and it does not displace section 8; the finder may also retain the goods until paid, which B has lost by returning the watch.

Conclusion: the suit fails; B may expect a gift out of gratitude but has no legal claim to the Rs 10,000.

Q2 (c) Headmaster's appointment resolved but not communicated to P

P's petition fails. A resolution of a body that is not communicated to the person concerned creates no right in him; an informal word from one member, in his personal capacity, is not communication by the authority.

- **Issue:** did P acquire a right to the post by the committee's resolution, so that the managing committee could not cancel it?
- **Rule:** an order is complete and effective against a person only when it is communicated to him by the authority; until then it is an internal step and can be reconsidered. The Supreme Court so held in *Bachittar Singh v State of Punjab* (1962) and applied it in *State of Punjab v Amar Singh Harika* (1966): an order takes effect only when it is communicated to the person affected, and until then the authority may reconsider it.
- **Contract law parallel:** an acceptance is complete as against the proposer when it is put in a course of transmission to him (section 4, Contract Act), but here the selection committee had not even dispatched it; a communication must come from the proposer or his authorised agent, and a stranger's information does not suffice.
- **Application:** the single member had no authority from the committee to convey the decision; his act was private. The appointment letter was never issued, so no employment arose and no promise could be enforced. The managing committee was free to cancel the resolution.
- **Fair play:** if the cancellation was arbitrary or in bad faith, P may at most complain of unfairness in the selection process, but cannot claim the post as of right.

Conclusion: petition dismissed; no appointment had been made effective against P.

Q2 (d)(i) Loan to a minor to defend a dacoity prosecution

The creditor cannot recover the money from the minor under the Contract Act. An agreement with a minor is void from the start; the lender's ignorance of his age does not change this.

- **Rule:** a minor is not competent to contract (section 11), and his agreement is absolutely void (*Mohori Bibee v Dharmodas Ghose* (1903)). It can neither be enforced against him nor ratified on majority. The Privy Council also held that there is no estoppel against a minor on his age, and no restitution of the loan under section 64 or 65, which apply to contracts voidable at the option of a party who was competent to contract.
- **Restitution:** the Indian rule allows restitution only where the minor obtained the advantage by fraudulently misrepresenting his age (*Khan Gul v Lakha Singh*). Here the lender did not know his age, but neither did the minor deceive him; the burden lies on the lender and there is nothing to show fraud.
- **Necessaries (section 68):** a person who supplies necessaries suited to the minor's condition in life is reimbursed from the minor's property, never from the minor personally. A bare cash loan is not a supply of necessaries; and defence of a criminal charge is not food, clothing or education. At most, a lender who proves that his money was actually paid to an advocate to protect the minor's liberty can argue for reimbursement from the minor's property, but only to that extent.

Conclusion: B cannot sue A on the promise; any recovery is limited to a section 68 claim against A's own property, which is doubtful on these facts.

Q2 (d)(ii) Wedding cancelled by the Government ban of 22 March 2020

The contract with the caterer is discharged under section 56 on the ground of supervening impossibility. Neither party is liable for damages; the advance paid is returned, subject to a fair deduction for expenses already incurred.

- **Rule:** a contract to do an act that afterwards becomes impossible or unlawful becomes void when the act becomes so (section 56, para 2). "Impossible" includes the failure of the very object that both parties had in view: *Satyabrata Ghose v Mugneeram Bangur* (1954).
- **Application:** the Government's order forbidding gatherings of more than ten persons made the buffet for the wedding unlawful and the purpose of the contract impossible. Neither A nor C caused it. The wedding was cancelled by the law, not at A's choice.
- **Consequences:** the contract is void; C cannot sue for the contract price or damages, and A cannot claim damages for non-performance. Under section 65, a party who received an advantage must restore it: C returns the advance, but may deduct the reasonable cost already incurred in preparation (food purchased, wages), proved by evidence.
- **Exception:** if the contract has a force majeure clause, its terms apply first. If the wedding could have been held with ten guests and the caterer had been willing to serve it, A cannot claim impossibility only because performance became more expensive.

Conclusion: the contract stands discharged; the advance, less proved expenses, is refunded and no damages are payable.

Q3 (a) When must a plaintiff seek declaration of title along with possession?

A suit for possession of immovable property can be maintained without a declaration when the defendant does not seriously dispute the plaintiff's title. When the defendant raises a genuine and substantial denial of title, or the title is clouded, the plaintiff must add a prayer for declaration (section 34, Specific Relief Act) to the prayer for possession.

- **Possession on title:** the plaintiff may sue for recovery of possession on his title (section 5, Specific Relief Act; Article 65, Limitation Act: twelve years from when the defendant's possession becomes adverse). The title is then decided as an issue in the suit.
- **Declaration needed:** where the plaintiff's title is denied and a cloud has been cast on it, for example by a registered document in the defendant's favour or by the defendant's claim of ownership by adverse possession, he must seek the declaration. Section 34 bars a declaration if the plaintiff, being able to seek further relief, omits to do so; conversely a mere possessory suit cannot be used to decide a serious question of title.
- **Void documents:** where the plaintiff is a party to a document that is voidable, he must have it set aside (section 31); where the document is void against him, he can ignore it.
- **Injunction suits:** a suit for injunction alone is only appropriate when the plaintiff is in settled possession and no title dispute exists; when title is in doubt the court requires a declaration and, if the plaintiff is out of possession, a prayer for possession. This was laid down in *Anathula Sudhakar v P Buchi Reddy* (2008).

Conclusion: add the declaratory relief whenever the defendant's denial of title is real and substantial, or when the plaintiff's title depends on setting aside a document or on a cloud being removed.

Q3 (b) Suit for injunction by one co-owner against another

Yes. Each co-owner owns every part of the property jointly, and so one co-owner cannot exclude the other; a co-owner may sue for a perpetual injunction (sections 38 and 39 of the Specific Relief Act) against another, but only in defined circumstances.

- **Ouster or exclusion:** if the defendant co-owner shuts out the plaintiff from joint possession, or threatens to do so, the plaintiff may restrain him. Exclusive possession by one co-owner is not itself ouster; the plaintiff must show that it denies his title or amounts to exclusion.
- **Alienation of the whole or a specific part:** a co-owner may transfer only his own undivided share; he can be restrained from selling or leasing the entire property, or a particular portion as if exclusively his. The other co-owners' remedy is partition, and the transferee's rights are limited to equity in the share.
- **Waste and damage:** construction, demolition or change in the nature of the joint property that destroys or materially alters the common property or prejudices the others' interest can be restrained; a co-owner can build on the common land only with consent, or where his share is allotted on partition.
- **No injunction:** against a co-owner who is using the property according to his share in a manner not inconsistent with the joint use, or where he is in separate possession by mutual arrangement long acquiesced in; the remedy then lies in partition or in accounts.
- **Tests for interim relief:** prima facie case, balance of convenience and irreparable injury (Order XXXIX Rules 1 and 2).

Conclusion: a co-owner can obtain an injunction against exclusion, against dealing with the whole property as his own, and against acts that cause waste or destroy the joint character of the property.

Q3 (c) Ex parte mandatory injunction

Yes, but only exceptionally. The court has power to grant an interim injunction without notice to the other side (Order XXXIX Rule 3), and a mandatory injunction, which compels the defendant to restore a thing to its earlier state, can be granted in that way only in a very clear case and for strong reasons recorded in writing.

- **Rule 3 requirements:** the court must record reasons why the object of the injunction would be defeated by delay; the applicant must supply the order and the papers to the opposite party at once, and file an affidavit of compliance; the application is then heard on notice within thirty days, or the court must record why it could not be.
- **Mandatory in nature:** section 39 of the Specific Relief Act allows a mandatory injunction at the final stage to prevent breach of an obligation. At the interim stage it undoes what has been done, so the court insists on a higher standard than for a prohibitory injunction: a strong prima facie case, a case of grave injury or irreparable harm, and the other side's conduct being high-handed.
- **Circumstances where it is granted:** the defendant has acted in secret to steal a march, for example by raising a construction overnight in defiance of the plaintiff's known right; the act is recent, the plaintiff acted promptly, and the status quo can be restored with little harm. Where the damage can be compensated, or where the plaintiff delayed, it is refused.
- **Safeguards:** the court should rather preserve the status quo by a prohibitory order; if a mandatory order is made, it should be limited, with costs and with an undertaking in damages if the injunction turns out to be wrong.

Conclusion: possible, but only in the exceptional case, on recorded reasons, with immediate notice to the defendant.

Q3 (d) Discretion of the court to deny specific performance

Before 1 October 2018, specific performance was a discretionary relief (old section 20). After the 2018 amendment, which substituted section 10, specific performance of a contract "shall be enforced", subject to sections 11(2), 14 and 16. The court's discretion is therefore narrower than before, but the relief can still be refused.

- **Contracts that cannot be specifically enforced (section 14, as substituted):** where substituted performance has been obtained under section 20; where the contract involves a continuing duty the court cannot supervise; where it depends on personal qualifications of the parties; and where it is by nature determinable.
- **Personal bars (section 16):** the plaintiff has taken substituted performance; he is incapable of performing, has broken an essential term or acted in fraud of the contract; or fails to prove that he performed, or was always ready and willing to perform, the essential terms.
- **Vendor without title (section 17), variation (section 18):** specific performance is refused against a vendor who has no title or whose title is doubtful, and where the plaintiff seeks to enforce the contract against a variation the defendant proves.
- **Part performance (section 12):** only a part is enforced where the unperformed part is small and compensable; otherwise the court refuses unless the plaintiff relinquishes the rest.
- **Equitable factors:** where the court finds delay or conduct of the plaintiff that makes enforcement inequitable, or hardship to the defendant, the court considers them in deciding on the relief; it can instead award compensation under section 21 or direct refund of the advance.
- **Substituted performance (section 20):** after default the aggrieved party may get the contract performed through a third party and recover the cost from the defaulter, in which case he cannot ask for specific performance.

Conclusion: the court no longer has free discretion; it may deny relief only on the statutory grounds of sections 11(2), 14 and 16, and on the settled equitable bars on the plaintiff's own conduct.

Q4 (a) The "best evidence" rule

The best evidence rule requires that the best available proof of a fact be produced; for a document, the document itself (the original) is the best evidence, and its contents may ordinarily be proved only by primary evidence (sections 61, 64 and 91, Indian Evidence Act). [BSA sections 56, 59 and 94.]

- **Primary evidence (section 62):** the document itself produced for the inspection of the court, including each part of a document executed in several parts; and, where a document is executed in counterparts, each counterpart as against the parties who executed it. [BSA section 57.]
- **Secondary evidence (section 63):** certified copies, copies made from the original by mechanical processes that ensure accuracy, copies compared with the original, counterparts against parties who did not execute them, and oral accounts of the contents by a person who has seen the document. [BSA section 58.]
- **Rule (section 64):** documents must be proved by primary evidence, except as mentioned. [BSA section 59.]
- **When secondary evidence is allowed (section 65):** when the original is shown to be in the possession of the adverse party who does not produce it after notice, or of a person out of reach of the court's process; the original is admitted or proved to be lost or destroyed; it cannot be easily moved; it is a public document or a document of which a certified copy is allowed by law; or the original consists of numerous accounts or documents that cannot be conveniently examined. [BSA section 60.]
- **Contracts and dispositions reduced to writing (section 91):** the terms can be proved only by the document itself or by secondary evidence where permitted; oral evidence to vary or contradict them is excluded (section 92, subject to its provisos). [BSA sections 94 and 95.]
- **Scope:** the rule is limited to documents; for oral evidence it requires only direct evidence (section 60). It does not require the best possible evidence of every fact.

Conclusion: contents of a document are proved by the document itself; copies are allowed only on laying the foundation under section 65.

Q4 (b) Electronic evidence and admissibility without formal proof

Electronic evidence is information stored, received or transmitted in electronic form, such as emails, computer files, CD or pen-drive contents, call records and CCTV footage. Electronic records are included in "evidence" (section 3, Evidence Act), and their contents are proved under sections 65A and 65B. [BSA sections 62 and 63.]

- **Section 65B(1):** any information in an electronic record, printed on paper or stored, recorded or copied on optical or magnetic media, is a document and admissible as evidence of the contents of the original, without further proof or production of the original, if the conditions in sub-section (2) are met.
- **Conditions (section 65B(2)):** the computer produced the information during a period in which it was regularly used to store or process information for the activities of a lawful controller of the computer; information of that kind was regularly fed in; the computer was working properly (or any defect did not affect the output); and the information reproduces the data fed in the ordinary course.
- **Certificate (section 65B(4)):** a certificate identifying the electronic record, describing how it was produced and the device used, and signed by a person occupying a responsible position in relation to the operation of the device or the relevant activities, is required as evidence of these matters.
- **Law laid down:** in *Anvar P V v P K Basheer* (2014) the Supreme Court held that electronic evidence by way of secondary evidence is inadmissible unless the section 65B certificate is produced, and that sections 63 and 65 cannot be used for this purpose, as section 65B is a special law that overrides them. The Supreme Court reaffirmed in 2020 that the certificate is a condition of admissibility of copies.
- **Primary evidence:** where the original device itself (the phone, laptop or hard disk) is produced in court and proved, no section 65B certificate is needed, because it is then primary evidence. Where the party cannot obtain the device (for example, a record on the other party's server), the court may direct its production; the certificate is required only when copies are tendered.

Conclusion: an electronic record is admissible without the original or other formal proof when it satisfies section 65B (conditions plus certificate), or when the original device is itself produced.

Q4 (c) Admissibility of a document obtained by improper or illegal means

Yes, in general. Indian law admits relevant evidence even if the way it was obtained was illegal or improper; the court looks at relevancy and genuineness, not at how the evidence reached it.

- **Principle:** if evidence is relevant under the Evidence Act, it is admissible, and the court does not stop to inquire how it was obtained (section 5; section 136 leaves admissibility to the judge on relevancy) [BSA sections 3 and 141]. A search or seizure made in breach of the Code of Criminal Procedure does not by itself render the seized documents inadmissible; the court examines them with caution, and weighs the irregularity (*Pooran Mal v Director of Inspection* (1974)).
- **Tape-recorded conversations:** a recording is admissible if it is relevant, the voice is identified, the recording is genuine and not tampered with, and the conversation is audible (*R M Malkani v State of Maharashtra* (1973)). Illegality in making the recording does not shut it out.
- **Exceptions:** evidence is excluded where a statute prohibits it (for example confessions induced by threat or promise, or made to police: sections 24 to 27) [BSA sections 22 and 23] or where its collection violates a constitutional guarantee in a manner that makes its use unfair, such as self-incrimination under Article 20(3), or where the court exercises its discretion to exclude evidence obtained by torture, coercion or serious violation of privacy in a way that threatens a fair trial.
- **Documents stolen or privileged:** a stolen document may be admitted; privileged communications (sections 126 to 129) remain protected [BSA sections 132 to 134].

Conclusion: an illegally procured document is admissible when relevant and genuine, subject to the court's caution and the statutory and constitutional exceptions.

Q4 (d) Partner who sold his own sugar to the firm at a profit

Yes. He must account to the firm for the profit and pay it over. A partner is bound to be just and faithful and to give full information about everything affecting the firm; selling his own goods to the firm, without disclosing that they were his, breaches that duty.

- **Rule:** partners must carry on the business to the greatest common advantage, be just and faithful to each other and render true accounts and full information (section 9, Indian Partnership Act). If a partner derives any profit for himself from a transaction of the firm or from the use of the firm's property or business connection, he must account for that profit and pay it to the firm (section 16(a)), subject to contrary agreement.
- **Application:** the firm's purchasing was entrusted to him because of his skill; he used that position, bought sugar for himself in anticipation of a price rise and sold it to the firm without disclosing that the sugar was his own. He thus stood in the position of both buyer and seller; his duty was to disclose, and to obtain the other partners' consent. He secured a benefit from a transaction concerning the firm and from the confidence reposed in him, and is a trustee of that profit.
- **Remedy:** the other partners may either treat the transaction as a purchase of his sugar and recover the profit he made, or rescind and return the sugar. Fraud is not required; undisclosed self-dealing is enough.

Conclusion: he is accountable to the firm for every rupee of profit above his cost, with the loss to the firm made good.

Q5 (a) Akanksha's resale of the scooter to Chetna; Bhumika's claim to Rs 500

The resale is valid as against Bhumika, and Chetna gets a good title. Bhumika is also entitled to the profit of Rs 500 because Akanksha did not give notice of resale. (The resale price is taken as Rs 17,500, as the question speaks of a profit of Rs 500 over Rs 17,000.)

- **Unpaid seller:** Akanksha is an unpaid seller as Rs 1,000 of the price is outstanding (section 45, Sale of Goods Act, 1930). The property had passed to Bhumika, yet Akanksha, still in possession, has a lien for the price (section 47), including where the buyer becomes insolvent, even though the credit term has not expired (section 47(1)(c)).
- **Resale:** a sale is not rescinded by the mere exercise of the lien (section 54(1)). If the seller who has exercised the lien resells, the new buyer acquires a good title against the original buyer, whether or not notice of resale was given (section 54(3)). So Chetna's title is safe.
- **Profit:** section 54(2) lets the seller resell after notice to the buyer if the price is not paid within a reasonable time, and then recover damages from the buyer without giving him the profit. If notice is not given, the seller cannot recover damages and the buyer is entitled to the profit on resale. No notice was given to Bhumika, so Akanksha cannot claim damages, and the profit of Rs 500 belongs to the buyer, here Bhumika's estate as she has become insolvent. Akanksha remains entitled to prove for the unpaid Rs 1,000 as a debt.

Conclusion: the resale is valid and Chetna keeps the scooter; Bhumika's estate may claim the Rs 500 profit, while Akanksha may claim the Rs 1,000 balance as an unpaid debt.

Q5 (b) Online order of patented medicine: Yamini's claim for refund

Yes. Yamini may claim a refund. The refusal to refund on the ground that the bottle has been opened is not valid when the defect could be found only on opening it. The contract is complete by electronic communication, and she is a consumer who can proceed under the Consumer Protection Act, 2019.

- **Contract of sale:** the online order and dispatch form a contract of sale of goods (sections 4 and 5 of the Sale of Goods Act; section 2(16) of the Consumer Protection Act includes buying goods over an electronic network).
- **Implied conditions (section 16, Sale of Goods Act):** the proviso to section 16(1) says that when a specified article is sold under its patent or trade name there is no implied condition of fitness for a particular purpose. But the implied condition of merchantable quality under section 16(2) applies to goods bought by description from a seller who deals in such goods, and the proviso excusing defects an examination ought to have revealed does not cover a latent defect found only on opening the bottle. A defective medicine is not of merchantable quality.
- **Remedies:** she may reject the goods within a reasonable time, intimating her refusal to the seller (section 43), or, if she is taken to have accepted them, treat the breach as a breach of warranty and claim damages equal to the price paid (section 13). She acted on discovering the defect, so delay is not an issue.
- **Consumer Protection Act, 2019:** a defect in quality is a defect (section 2(10)); refusing to take back defective goods and to refund the price within the stipulated time, or thirty days, is an unfair trade practice (section 2(47)(viii)). The District Commission may order removal of the defect, replacement or refund with interest, and compensation (section 39). Yamini may file the complaint where she resides (section 34(2)(d)); she need not go to Chennai.

Conclusion: the refusal is unjustified; Yamini may claim refund and compensation, and the "opened bottle" condition cannot defeat a claim based on a latent defect.

Q5 (c) Classes of civil courts under the Punjab Courts Act, 1918

Section 18 lists the classes of civil courts below the High Court: the Court of the District Judge and the Court of the Subordinate Judge, besides the Courts of Small Causes under the Provincial Small Cause Courts Act, 1887 and courts established under any other enactment in force.

- **District Judge (sections 19 and 20):** the territory is divided into civil districts, with a District Judge for each; the District Court is the principal civil court of original jurisdiction in the district (section 24) and its original jurisdiction in civil suits is unlimited as to value (section 25).
- **Additional District Judges (section 21):** they exercise the jurisdiction of the District Judge in cases the High Court directs or the District Judge makes over to them, and are treated as the Court of the District Judge for those cases.
- **Subordinate Judges (sections 22 and 26 to 29):** their number is fixed after consultation with the High Court; the High Court determines their pecuniary limits of jurisdiction by classes and defines their local limits (sections 26 and 27); a Judicial Magistrate may be invested with the powers of a Subordinate Judge (section 22(2)); Honorary Subordinate Judges may be appointed (section 28); and a Subordinate Judge may be invested with small cause jurisdiction (section 29).
- **Omitted classes:** the Court of the Munsif (repealed in 1922) and the separate Court of the Additional Judge (omitted in 1963) no longer exist.
- **Appeals:** in Haryana, an appeal from a decree or order of a Subordinate Judge lies to the District Judge irrespective of the value (section 39 as substituted by the Haryana amendment of 1978); an Additional District Judge hears appeals only as directed.

Conclusion: two regular classes (District Judge and Subordinate Judge), with Additional District Judges sharing the District Judge's work and small cause courts alongside.

Q5 (d) Revision of fair rent under the Haryana Urban (Control of Rent and Eviction) Act, 1973

Once the Controller has fixed the fair rent of a building or rented land, no further increase or decrease is allowed for five years (section 5(1)). Within that period, and afterwards, the rent can be revised only in the cases below.

- **Addition, improvement or alteration (section 5(1), first proviso):** the rent may be increased where an addition, improvement or alteration has been carried out at the landlord's expense in the building or rented land in the tenant's occupation, at the tenant's request.
- **Fall in accommodation or amenities (second proviso):** the rent may be reduced where there is a decrease or diminution in the accommodation or amenities provided.
- **Local taxes (section 8):** if a fresh rate, cess or tax is levied by a local authority after the tenancy began, or an existing one is raised, the landlord may increase the rent by not more than the amount of the tax or its increase, payable from the date of a written demand by registered cover. The landlord cannot recover more than the tax actually levied.
- **Amenities supplied by the tenant (section 9):** if the landlord fails to provide water, electricity or sewerage amenities after being asked, the Controller may allow the tenant to provide them at the landlord's cost, with deduction from rent up to fifty per cent of each rent; thereafter the landlord can enhance the rent by eight per cent a year of the amount spent (section 9(6)).
- **Fresh fixation:** after five years, either party may apply under section 4 for fresh fixation, which operates from the date of the application. The Controller fixes the basic rent by reference to the rent prevailing in the locality (for buildings completed up to 31 December 1961, the rent for the year 1962; for later buildings, the agreed rent) and may allow an increase or decrease of not more than twenty-five per cent for the change in the wholesale price index. The Controller decides any dispute on increase or decrease.

Conclusion: five-year freeze, with exceptions for improvements, reduced amenities, local taxes and amenities supplied by the tenant; thereafter a fresh application under section 4.

Q5 (e) Eviction of a tenant under the Haryana Urban (Control of Rent and Eviction) Act, 1973

A tenant cannot be evicted except in accordance with section 13 (section 13(1)). The landlord applies to the Controller, who orders eviction only on the grounds below, after giving the tenant a fair chance to show cause.

Section 13(2): grounds common to all buildings and land

- Non-payment of rent due within fifteen days after the end of the agreed period, or of the next month if no period is agreed. If the tenant pays or tenders the arrears with interest at eight per cent a year and costs within fifteen days of the first hearing, he is treated as having paid in time.
- Without the landlord's written consent after the 1949 Act, he has transferred the tenancy rights or sublet the whole or part, or used the property for a purpose other than the one for which it was let.
- He has done acts that are likely to impair materially the value or utility of the building or land; or he has been guilty of conduct a nuisance to the occupiers of the same or adjoining buildings.
- In a building outside a hill station, he has not occupied it for four continuous months without reasonable cause.

Section 13(3): grounds for the landlord's own need

- Residential building: the landlord's own occupation (if he has no other residential building in the urban area and has not vacated one without cause); his son's use as an office or consulting room if the son is starting practice as a lawyer, architect, chartered accountant or registered medical practitioner, or his married son's residence, subject to the same conditions; where it was let as residence because of the tenant's employment and he has ceased to be employed (a dismissed workman is protected until the labour authority confirms the dismissal); where the tenant has acquired or built a sufficient residential building in the urban area; where the landlord is a member of the armed forces needing it for his family, with the required certificate.
- Rented land: the landlord requires it for his own business use and has no other rented land for the purpose.
- Any building or land: it is required to carry out building work for the State Government, local authority or improvement trust under a development scheme, or it has become unsafe or unfit for human habitation.
- Non-residential building: a landlord discharged or retired from the armed forces, or a minor son of a deceased landlord after attaining eighteen, may apply within three years for personal use (section 13(3A)).

Procedure and safeguards

- The Controller orders eviction only if satisfied that the claim is bona fide; he may give the tenant up to three months to vacate (section 13(4)). Armed-forces claims are decided within a month (section 13(5)), and section 13A gives special summary procedure for armed forces personnel and government employees.
- If the landlord who gets possession for his own use or his son's does not occupy it for twelve continuous months, the tenant may apply to be restored to possession (section 13(6)). A frivolous application can be met with compensation up to Rs 500 (section 13(7)). A landlord who obtained possession for own use cannot apply again for another building of the same class.
- Where the tenancy is for a fixed period, the landlord cannot apply on the own-need grounds before the period expires, except in the case of his son's office or residence.

Conclusion: eviction is available only on these statutory grounds, proved before the Controller; the Act protects the tenant from eviction on any other ground.