

INDEX

BUSINESS LAWS AND ETHICS QUESTION BANK- 2

S. No.	Chapter Name	Q. No	Page No.
1. INDIAN CONTRACT ACT, 1872			
1.1	NATURE OF CONTRACT	9	1-7
1.2	OFFER & ACCEPTANCE	17	8-19
1.3	CAPACITY TO CONTRACT	14	20-28
1.4	CONSIDERATION	13	29-35
1.5	FREE CONSENT	9	36-41
1.6	OTHER ESSENTIAL ELEMENTS	12	42-49
1.7	PERFORMANCE OF A CONTRACT	15	50-59
1.8	BREACH OF CONTRACT	13	60-68
1.9	CONTINGENT & QUASI CONTRACTS	13	69-77
1.10	INDEMNITY & GUARANTEE CONTRACT	25	78-93
1.11	BAILMENT AND PLEDGE	33	94-110
1.12	AGENCY	26	111-126
	MCQ'S	65	127-134
2. SALES OF GOODS ACT, 1930			
2	SALES OF GOODS ACT, 1930	64	135-175
	MCQ'S	43	176-181
3. INDIAN PARTNERSHIP ACT, 1932			
3.1	INDIAN PARTNERSHIP ACT, 1932	32	182-203
	MCQ'S	31	204-211
4. LIMITED LIABILITY PARTNERSHIP ACT, 2008			
4.	LIMITED LIABILITY PARTNERSHIP ACT, 2008	43	212-240
	MCQ'S	29	241-244
5. NEGOTIABLE INSTRUMENT ACT, 1881			
5	NEGOTIABLE INSTRUMENT ACT, 1881-I	65	245-288
	MCQ'S	50	289-294
INDUSTRIAL LAWS			
1	FACTORIES ACT, 1948	19	295-307
	MCQ'S	80	308-315

INDEX

2.	PAYMENT OF GRATUITY ACT, 1972	26	316-335
	MCQ'S	43	336-340
3.	EMPLOYEES PROVIDENT FUNDS, 1952	18	341-351
	MCQ'S	34	352-355
4.	EMPLOYEES STATE INSURANCE ACT, 1948	19	356-367
	MCQ'S	41	368-372
5.	CODE ON WAGES, 2019	35	373-393
	MCQ'S	37	394-399
BUSINESS ETHICS			
11	BUSINESS ETHICS	27	400-421
	MCQ'S	66	422-429

TOTAL NO OF QUESTIONS= 547
TO NO OF MCQ'S= 519

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INDIAN CONTRACT ACT, 1872

1. NATURE OF CONTRACT

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. June 2016 MTP. Dec 2019 & MTP Dec 2022 & MQP June 2023, June 2024] [8 Marks]

1. What are the essential elements of a contract?

Or

Describe the essential features of a valid contract

Or

"Contracts are legally enforceable but every agreement may not be enforceable under law" - Discuss with reason

Answer:

Essential Elements of a valid contract

The Indian Contract Act was enacted in 1872 which enlists provisions that could help the adjudicating authority in deciding the rights and liabilities of the parties. Section 10 provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not otherwise expressly declared to be void. The following are the requirements for a valid contract

The following are the elements for a valid contract

- There shall be an offer or proposal by one party and acceptance of the proposal by the other party which results in an agreement.
- There shall be an intention to create legal relations or intent to legal consequences.
- The agreement shall be supported by lawful consideration.
- The parties to the contract shall be competent to contract.
- There shall be free consent between the parties to the contract.
- The object and consideration of the contract shall be legal and the same shall not be opposed to public policy.
- The terms of the consent shall be certain.
- The agreement is capable of being performed and it is not impossible of being performed.

Examples:

- a) A proposes, by letter, to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete, as against A when the letter is posted and as against B, when the letter is received by A.

- b) R offers M his house for sale at Rs1 Crore on 5th July, 2022. M agrees to buy the same at the given time and price asked by R. Both R and M are 40 years old and are of sane mind.

This is a contract as per Section 10 of the Indian Contract Act, 1872.

Section 2(h) of the Act states that "an agreement enforceable by law is a contract". To constitute an agreement, it is essential that there exists an offer. Such offer when accepted, gives rise to an agreement. However, to conclude a contract the fulfilment of other pre-requisites of consideration, legality of object, competence of parties and so on, is required. Contracts are legally enforceable. However, every agreement may not be enforceable under law.

According to Section 2(g), an agreement not enforceable by law is said to be void.

The following agreements are considered to be void:

- If considerations and objects are unlawful in part - Section - 24;
- Agreements without consideration - Section 25;
- Agreement in restraint of marriage - Section 26;
- Agreement in restraint of trade - Section 27;
- Agreements in restraint of legal proceedings - Section 28;
- Agreements void for uncertainty - Section 29;
- Agreements by way of wager - Section 30;

Section 24 provides that if any part of a single consideration for one or more objects or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void.

Example - A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles, B promises to pay to A salary of ₹ 10,000 a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful

[MQP Dec. 2024]

[7 Marks]

2. Analyze the conditions of enforceability of the standard form of contracts.

Answer:

A standard form contract is a pre-drafted contract containing set terms and conditions, offered by one party on a "take it or leave it" basis, without negotiation or customization to the transaction or parties involved. They are also known as contracts of adhesion, signifying the weaker party simply adheres to the terms presented with little choice, or boilerplate contracts, containing standard boilerplate terms. Businesses use standard forms to maximize efficiency in mass contracting. However, they limit the free exercise of contracting powers and are prone to overreach.

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Under section 10 of the Indian Contract Act, 1872, standard forms constitute valid contracts. The parties objectively manifest assent through signature or conduct. However, additional requirements may apply:

- Reasonable notice of terms** – Unexpected or surprising terms may be unenforceable if the adherent lacks reasonable notice.
- Incorporation into contract** – Terms must be incorporated into the contract rather than merely stated on an ancillary document like a receipt.
- Absence of misrepresentation/fraud** – If there is misrepresentation or fraud regarding the terms of the contract, this will vitiate consent and render the contract voidable at the instance of the affected party. This aligns with the Indian Contract Act, which makes a contract voidable if consent is obtained by misrepresentation or fraud (Section 19 and 17 of the Indian Contract Act).
- Fundamental breach** – Exclusion clauses cannot protect a party committing a fundamental breach. This means that if one party commits a major violation of the contract's terms, an exclusion clause (such as a clause that limits liability for breach) will not protect them.
- Contra proferentem** – The contra proferentem rule is applicable in interpreting ambiguous terms in a contract. This rule dictates that any ambiguity in the terms of a contract will be interpreted against the party that drafted the contract, typically the proferens (the offeror).
- Contemporaneous notice** – Notice of terms must be given at the time of contract formation. These requirements flowing from fairness and public policy principles can limit oppressive terms in standard form contracts under Indian law.

[PP. June 2017, Dec 2024, Dec 2018 & MTP Dec 2022]

[5 Marks]

3. Short note on E-Contracts.

Or

What are different ingredients of the E-contracts?

Answer:

E-contracts are paperless contracts. It is in electronic form. They are conceptually very similar to traditional contracts. E-contract also require basis of contract. The Information Technology Act, 2000 regulates such contracts. The following are ingredients of the e-contracts:

- An offer is to be made:
- Offer is to be accepted:
- There shall be a lawful consideration:
- There shall an intention to create legal relations:
- The parties must be competent to contract:
- There must be free and genuine consent:
- The object of the contract must be lawful:
- The main feature of this type of contract is speed, accuracy and reliability.
- The parties to the contract have to obtain digital.

EXTRA THEORY QUESTIONS

4. How would you determine whether an agreement is a contract? "Every contract is an agreement but every agreement is not a contract Explain.

Answer:

- The term "contract" is defined in Section 2(h) of the Indian Contract Act, 1872, as follows: An agreement enforceable by law is a contract. Thus for the formation of a contract there must be:
 - An agreement, and
 - The agreement should be enforceable by law.
- Every contract is an agreement, but every agreement is not a contract. An agreement becomes a contract when the following conditions are satisfied:
 - There is some consideration for it.
 - The parties are competent to contract.
 - Their consent is free.
 - 4) Their object is lawful.
- A contract comes into existence only when all the terms and conditions have been finalized.

5. Distinguish, between Void and illegal agreements.

Answer:

Distinction between 'Void and Illegal agreements': According to Section 2(g) of the Indian Contract Act, an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void. Despite the similarity between an illegal and a void agreement that in either case the agreement is void and cannot be enforced by law, yet the two differ from each other in the following respects:

- Scope:** An illegal agreement is always void while a void agreement may not be illegal being void due to some other factor e.g. an agreement the terms of which are uncertain is void but not illegal.
- Effect on collateral transaction:** If an agreement is merely void and not illegal, the collateral transactions to the agreement may be enforced for execution but collateral transaction to an illegal agreement also becomes illegal and hence cannot be enforced.
- Punishment:** Unlike illegal agreements, there is no punishment to the parties to a void agreement.
- Void ab-initio:** Illegal agreements are void from the very beginning, but sometimes valid contracts may subsequently become void.

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6. What is an illegal agreement? State the effects of illegality.

Answer:

An illegal agreement and the effects of illegality: The illegal agreements are those which involve committing of a crime or act of moral turpitude or acts opposed to public morals. An illegal agreement is not only void as between the immediate parties; but its collateral transactions are also illegal.

Effects of illegality: Generally in law, no action is allowed on an illegal agreement so that people will be discouraged from entering into an illegal agreement. Thus, no action can be taken for recovery of money paid property or property transferred under an illegal agreement and for breach of illegal agreement.

7. Explain (Give brief answers): All illegal agreements are void but all void agreement are not illegal.

Answer:

All illegal agreements are void but all void agreements are not illegal: All illegal agreements are void but all void agreements are not illegal. A void agreement is one which has no legal effect. An illegal contract like the void agreement has no legal effect in between the immediate parties, but has this further effect that transactions collateral to such a contract become tainted with illegality and are, therefore not enforceable.

A contract, that is illegal as termed and is therefore void ab-initio, is treated by law, as if it had not been made at all. Hence parties to an illegal contract cannot get help or protection from a court of law. Thus in the case of an illegal contract for the sale of goods, the buyer even though he has paid the price, cannot sue for non-delivery. The Seller who had made delivery cannot recover the price. A servant cannot recover arrears of salary under an illegal contract of employment. Any money paid under the illegal contract cannot be got back. No suit can be filed in respect of an illegal contract.

8. Contract can be contract. classified on different basis viz., generally, based on point performance and from view of English Law. Briefly describe each such types of contract.

Answer:

Types of contract

1. **Classification of contracts - Generally**

- Void Contracts:** Section 2 (G) defines a void contract as a contract which ceases to be enforceable by law become void when it ceases to be enforceable". It is thus a contract that cannot be enforced by law.
- Voidable Contract:** Section 2 (i) defines a voidable agreement which is enforceable by law at the option of one or more parties but not at the option of the other or others is a voidable contract.
- Illegal Contracts:** Illegal contracts are those that are forbidden by law. All illegal contracts are hence void also.

2. **Classification on the basis of formation of contract:**

- Express Contracts:** A contract would be an express contract if the terms are expressed by words or in writing section 9 of the Act provides that if a proposal or its acceptance of any promise made (even) in words the promise is said to be express.
 - Implied Contracts:** When proposal or acceptance is made otherwise than by words, the promise is said to be implied. For instance 'A' delivers goods by mistake at the warehouse of 'B' instead of that of C Here B not being entitled to receive the goods is obliged to return the goods to 'A' although there was no such contract to that effect.
 - Tacit Contracts:** Tacit contracts are those that are inferred through the conduct of parties. A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM].
 - Quasi-Contracts:** Quasi-contracts are contracts imposed by law upon a person for the benefit of another on principles of equity, justice and good conscience. They are based on the principle that a person cannot be allowed to enrich himself at the expense of another. They always relate to a claim for money against a particular person only. The Indian contract Act calls them 'relations resembling to those of contracts.'
 - E-Contracts:** When a contract is entered into by two or more parties using electronics means, Such as emails is known as e-commerce contracts.
3. **Classification of contracts based on performance.**
- Executed Contract:** The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.
 - Executory Contract:** In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.
 - Unilateral Contract:** Unilateral contracts is a one-sided contract in which only one party has to perform his duty or obligation.
 - Bilateral Contracts:** A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

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9. Explain the distinctions between void and voidable contract.

Answer:

Difference between void and voidable contract:

Basis	Void Contract	Voidable Contract
Meaning	A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
Performance of contract	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
Rights	A void contract does not grant any right to any party.	The party whose consent was not free has the right to rescind the contract.

2. OFFER & ACCEPTANCE

[PP, June 2014]

[2 Marks]

10. When a communication of a revocation of an offer is Complete?

Answer:

As per Section 4(3) of Indian Contract Act, 1872, the communication of a revocation of offer is complete:

- As against the person who revokes it: When it is put into a course of transmission to the person to whom it is made, so as to be out of power of the person revoking it.
- As against the person to whom it is made: When it comes to his knowledge.

[MTP, Dec 2018]

[10 Marks]

11. What is an offer and what are the points to be taken into account for a valid offer?

Answer:

The term proposal is otherwise called as offer. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for promise, act or forbearance. Section 2(a) of the Act defines proposal or offer as when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal or offer. The person making the proposal is called as offeror or proposer and the person the proposal is made is called as offeree.

The following points are to be taken into account for a valid offer-

- The offer must be in clear, definite, complete and final terms. It should not be vague in terms;
- The offer must be communicated to the offeree. The offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the offer;
- The communication may be in writing or oral;
- The communication may be in expressed terms or in implied terms;
- The offer may be general or specific - if an offer is made to a specific person it is called specific offer. Such offer can be accepted by such specific person; if an offer is made to the world at large, it is a general offer. It can be accepted by any member of the general public by fulfilling the condition laid down in the offer;
- Communication of offer is complete when it comes to the knowledge of the person to whom it is made.

An offer which has been communicated properly continues as such until it lapses or revoked by the offeror or rejected or accepted by the offeree.



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ICA, 1872



[MQP, Dec 2023]

[7 Marks]

12. Analyze the legal provisions relating to competence of parties to enter into a valid contract under "The Indian Contract Act 1872".

Answer:

The law of Contract in India is contained in the Indian Contract Act, 1872 and it is mainly based on English common law consisting of judicial precedents. The Act ensures that the rights and obligations arising out of the contract are honoured and the promises are kept. It provides for the appropriate legal remedies to the aggrieved party in case of breach of the contract.

- a) **Proposal (Section 2 (a))**: When one person signifies to another his willingness to do or to abstain from doing anything to obtain the assent of that other to such act or abstinence, he is said to make a proposal
- b) **Agreement (Section 2(e))**: Every promise and every set of promises forming consideration for each other is called an agreement
- c) **Contract (Section 2(h))** → An agreement enforceable by Law [iii]:

Offer + Acceptance = Promise

Promise + consideration = agreement

Agreement + enforceability = Contract

Every contract is an agreement, but every agreement is not a contract. An agreement becomes a contract when the essentials mentioned in Section 10 and other sections of the Indian Contract Act, 1872 are fulfilled, as then only an agreement becomes enforceable by law and the law will protect the parties to the contract against any breach of the terms and conditions of such contract.

Essentials of a valid contract

Section 10 of the Act lays down the following essentials which are required to make an agreement into a valid contract.

- a) They are made with free consent
- b) Made between two or more competent parties.
- c) Made for lawful consideration.
- d) Made with a lawful object.
- e) Not expressly declared to be void.

Some other essentials of a valid contract are:

- a) **Offer and acceptance:** - The first essential for creating a contract is an offer. The person making the proposal is called an offeror or promisor and the person accepting the offer is called the offeree or promisee

➤ **Essentials of a valid offer:**

- An offeror expresses his willingness to do or abstain from doing with a view to obtain the assent of the offeree
- Intention to create a legal relation.

- A valid offer could be in expressed form i.e. in words either written or spoken or implied form i.e. by conduct.
 - The terms of the offer must be certain and not ambiguous.
 - The offer must be clearly communicated to the other party
 - When the proposal is accepted by the offeree it results in an agreement. Acceptance is the assent given to the proposal.
- **Essentials of a valid acceptance:** -
- The acceptance must be communicated to the offeror by the offeree - Communication of acceptance by post, Communication of acceptance by telephone
 - The acceptance must be unconditional and absolute
 - The contract is completed when the offeror had heard the acceptance at his end rather than when the acceptor has spoken the words of acceptance unlike the case when the letter of acceptance is posted and it gets completed the moment is posted.
- b) **Intention to create a legal obligation:** - Agreements made by the parties without an intention to create a legal obligation are not enforceable by law. The law presumes that the parties in case of domestic and social agreements do not have an intention to create a legal obligation.
- c) **The terms contained in an agreement must not be vague or uncertain:** - Lawful Consideration, Lawful Object, Free consent, Two or more competent parties, Terms of the agreement must be certain.
- d) **The agreement must be capable of performance:** - According to Section 56 of the Contract Act, any agreement made to do an impossible or unlawful act is itself a void agreement. When a contract is made and afterward, it becomes impossible or unlawful to perform due to some reason which the promisor could not prevent, the contract becomes void. Here, the section provides for the subsequent or supervening impossibility which made the performance of the contract impossible. This is also known as the Doctrine of frustration.
- e) **Other legal formalities:** - A contract can be in written form or can be entered orally. In certain cases, it is given under the Act that the contract must be in writing, registered or there must be witnesses, etc. All these legal formalities also decide the validity of a contract

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ICA, 1872



[PP, June 2016]

[8 Marks]

13. What are essential elements of valid acceptance?

Answer:

- **Be absolute & unqualified:** If the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract. **An invitation with variation is no acceptance;** it is simply a counter proposal which must be accepted by the original proposer before any contract is made. **A counter offer puts an end to the original offer** and cannot be revived by subsequent acceptance unless it is renewed. It must be unqualified and absolute and must correspond with all terms of the offer.
- **Be accepted in prescribed or reasonable manner:** If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner. If no manner is prescribed than in reasonable manner.
- **Specific offer must be accepted by specific person:** If an offer is made to a specified person then that specific person can only accept the offer to make it valid.
- **It may be express or implied or oral or written:** The proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. It can be inferred from the conduct of the parties.
- **Be in whole not in parts:** Acceptor should accept the whole proposal in total and not in parts. Part acceptance is no acceptance binding.
- **Communication of acceptance is must:** A mental determination to accept unaccompanied by any external indication will not be sufficient acceptance. To constitute an acceptance such acceptance must be communicated to the offeror or his authorized agent. **Mere silence on the part of the offeree does not amount to acceptance.**
- **It must be given before the time lapses:** Acceptance must be given before the offer lapses by expiry of time fixed or by expiry of reasonable time if no time is so fixed or before it is withdrawn or revoked by the offeror.

[MTP, June 2020]

[8 Marks]

14. Write a note on 'Acceptance'

Answer:

To constitute a promise, the intention of the parties must be communicated. One cannot accept an offer which had not been communicated to him. In general, **uncommunicated offer cannot result in a promise.**

The term '**acceptance**' means **admitting and agreeing to something** to accede to something or to accept something. An offer to enter into legal relations, upon definite terms, to create legal relations, must be followed by an intention of the offeree to accept that offer.

In '**Thawardar Phurmal V. Union of India**' – AIR 1955 SC 468 the Supreme Court held that before an offer can become a binding promise and result in an agreement it must be accepted, either by words or acts. A person cannot be bound by a one sided offer which is never accepted particularly when the parties intended that the contract should be reduced in writing. **A promise cannot bind its make unless the promise has assented to it.**

Section 4 provides that the communication of an acceptance is complete-

- **as against the proposer,** when it is **put in a course of transmission to him**, so as to be out of the power of the acceptor;
- **as against the acceptor,** when it **comes to the knowledge of the proposer.**

EXTRA THEORY QUESTIONS

15. Distinguish between 'Offer and invitation to an offer.

Answer:

Offer and invitation to an offer: An offer is the **final expression of willingness by the offer or to be bound by his offer**, should the other party choose to accept it. On the other hand **offers made with the intention to negotiate or offers to receive offers are known as Invitation to offer**. Thus, where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms.

In order to ascertain whether a particular statement amounts to an offer or an invitation to offer, the test would be **intention with which such statement is made**. The mere statement of the lowest price at which the vendor would sell contains no implied contract to sell at that price to the person making the offer.

The test to decide **whether a statement is an offer or invitation to offer**, is to see the '**intention**'. **If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer.** If he ever intends to do some other act, he is making only an invitation to offer. **Thus the intention to be bound is the important thing, which is to be seen.**

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ICA, 1872



In Harvey Vs. Face (1893) explained the distinction between offer and invitation to offer. In the given case the plaintiffs through a telegram asked the defendants two questions namely,

- Will you sell us Bumper Hall Pen? And
- Telegraph lowest cash price

The defendants replied through telegram lowest price for Bumper Hall Pen \$900. The plaintiffs sent another telegram stating "we agree to buy Bumper Hall Pen \$900." However the defendants refused to sell the property at the price

The plaintiffs sued the defendants contending that they had made an offer to sell the property at \$900 and therefore they are bound by the offer.

However judicial committee did not agree with the plaintiffs on the ground that when plaintiff had asked two questions. The defendant replied only the second question by quoting the price but did not answer the first question but reserved their answer with regard to their willingness to sell. Thus they made no offer at all. Their Lordships held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price

Examples of an invitation to offer:

- goods displayed in show window with price tags thereon.
- Prospectus issued by a company inviting the public to apply for shares.
- Price lists or catalogues.
- Circulars sent to potential customers.
- Tender notice.
- Auction notice

16. Distinguish between 'General offer and Specific offer.

Answer:

Kinds of offer: The kinds of offer may be discussed as follows:

- General offer: It is an offer made to the public at large and hence anyone can accept and do the desired act (Carlill v. Carbolic Smoke Ball Co. 1893). For instance, an offer to give reward to anybody who finds a lost dog is a general offer. Although a general offer is made to the public at large, the contract is concluded only with that person who acts upon the terms of the offer.
- Specific offer: When the offer is made to a specific or an ascertained person it is known as a specific offer. Specific offer can be accepted only by that specified person to whom the offer has been made (Bottom v. Johns).
- Cross offer: When two parties exchange identical offers in ignorance at the time of each- others offer, the offers are called Cross Offers. There is no binding contract in such a case 'because-offer made by a person cannot be treated as an acceptance of the another's offer [Tinn v. Hoffman and Co. (1873) 29 LT. 271].

- Counter offer: When the offeree offers to qualified acceptance at the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter offer amounts to rejection of the original offer (Hyde B. v. Wrench 1840).
- Standing, Open or Continuing offer: An offer which is allowed to remain open for acceptance over a period N. of time is known as a standing, open or continuing offer. Tender for the supply of goods offer. is a kind of standing

17. Who is competent to accept an offer? Explain the rules relating to an offer, as provided in the Indian contract Act, 1872.

Answer:

When an offer is made to a particular person it can be accepted by him alone. If it is accepted by any other person, there is no valid acceptance. However, in case of general offer, it can be accepted by anyone, who has the knowledge of the offer. The person who wants to accept the offer must be competent to enter into contract, as per the requirements of the Indian Contract Act.

Legal Rules relating to an offer:

- Offer must be such as in law is capable of being accepted and giving rise to legal relationship. A social invitation, even if it is accepted, does not create any relations because it is not so intended.
- Terms of offer must be definite, unambiguous and certain and not loose and vague.
- Offer must be distinguished from:
 - a declaration of intention and an announcement and
 - an invitation to make an offer or do business.
- Offer must be communicated, otherwise there can be no acceptance of it. An acceptance of the offer, in ignorance of the offer, is no acceptance and does not confer any right on the acceptor.
- Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer
- Offer should not contain a term the non-compliance of which may be assumed to amount to acceptance.
Thus, a man cannot say that if acceptance is not communicated by a certain time, the offer would be considered as accepted.
- A statement of price is not an offer

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18. Briefly answer: When does an offer come to an end?

Answer:

When does an offer come to an end: An offer may come to an end by revocation or lapse or rejection. According to Section 6 and 7 of the Indian Contract Act, 1872, an offer comes to an end in the following cases:

- If the offeror revokes his offer before it has been accepted by the offeree, the offer comes to an end
- The offer comes to an end if it is not accepted within the time fixed in the offer, or within a reasonable time as the case may be. What is a reasonable time is a question of fact.
- If there is a condition mentioned in the proposal, before the fulfillment of which the acceptor cannot accept the proposal, the offer will automatically be revoked if the acceptor fails to fulfill that condition precedent.
- If the fact of the death or insanity of the proposer comes to the knowledge of the acceptor before acceptance, the offer of proposal is revoked. (Section 6).
- Sometimes, the mode of acceptance is specifically prescribed in the offer. In such a case, if the proposal is not accepted in the prescribed form or method, it stands revoked. [Section 7(2)].
- An offer comes to an end as soon as it is rejected by the offeree.
- An offer lapses if it becomes illegal before it is accepted.

19. Comment-Offer is lighted match while acceptance is a train of gunpowder.

Answer:

Offer is lighted match while acceptance is a train of gunpowder: It is a cardinal rule as regards to acceptance that once the acceptance has been made to an offer the contract is complete. According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gunpowder". The effect is that the acceptance produces something which cannot be recalled or undone. But the man who led the train may remove it before the match is applied. So an offer may lapse for want of acceptance, or be revoked before acceptant. Acceptance converts the offer into promise and then it is too late to revoke it. This means that as soon as a lighted match is brought in contact with a train of gunpowder, the gun powder explodes.

Offer is compared to gun powder and acceptance to a lighted match. Gun powder (i.e. the offer) by itself is inert, it is the lighted match i.e. the acceptance) which causes then gunpowder to explode. The meaning is that an offer itself cannot create legal relations between the parties, but as soon as it is accepted by the offeree, legal relationship is established between the parties. Once an offer is accepted it becomes a promise and cannot be revoked or withdrawn.

20. Explain (Give brief answers): An acceptance must be made 'before the proposal lapses.

Answer:

An acceptance must be made before the proposal lapses: Under Section 5 of the Indian Contract Act, 1872, a proposal may be revoked at any time, before the communication of its acceptance is complete as against the proposer but not afterwards. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor but not afterwards. Therefore, an acceptance must be made before the offer lapses or is revoked

21. When is the communication of an offer and acceptance complete? How and when can an offer and acceptance be revoked?

Answer:

Communication of offer & acceptance (Sec. 2 to 6):

- Communication of an offer by one person to another is essential for the validity of an agreement for an offer cannot be accepted by a person who has no knowledge of it. (Lalman Shukla vs. Gauri Dutt).
- A mere mental acceptance unless communicated to the other is no acceptance
- Offer and acceptance may be communicated by one person to another either by words spoken or written or by conduct (Carlill vs. Carbolic Smoke Ball Co.).
- An offer need not be made to an ascertained person.
- When a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance (Carlill v. Carbolic Smoke Ball Co.).
- Acceptance, of the document without protest is tantamount to a tacit acceptance of the condition and the acceptor would be bound by the contract provided the party delivering the document has done all that can reasonably be regarded as necessary to give notice of the special terms.

Note 1: Communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

Note 2: Communication of acceptance is complete:

- As against the proposer when it is put in the course of transmission to him so to be out of power of the acceptor and;
- As against the acceptor when it comes to the knowledge of the proposer.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



CASE STUDIES

[RTP, Dec 2018]

22. Briefly answer- When is the communication of an offer and acceptance through post complete?

Answer:

Communication of an offer and acceptance through post [Section 4]: Communication of an offer is complete through post when it comes to the knowledge of the person to whom it is made i.e., when the letter containing the offer reaches the offeree.

Communication of acceptance has two aspects:

(i) As against the proposer.

(ii) As against the acceptor.

Against the proposer, the communication of acceptance is complete when it is put in the course of transmission to him, so as to be out of the prior of the acceptor, but it shall be complete as against the acceptor when it comes to the knowledge of the proposer, e.g. A proposes by letter to sell a house to B at a certain price. B accepts A's proposal by a letter sent by post. The communication of acceptance is complete;

a) **As against A, when the letter is posted by B.**

b) **As against B, when the letter is received by A.**

Thus an offer can be revoked till a duly addressed letter of acceptance is put in the course of transmission and not thereafter. It is immaterial whether the letter of acceptance reaches the other party or is lost in transit. The acceptance can, however, be revoked till the letter of acceptance actually reaches the offeror and he learn of its contents.

23. When the revocation of a proposal may be made otherwise than by communication?

Answer:

A proposal may be revoked not only by the communication of the notice of revocation **by the proposer** or by his **authorised agent** to the other party but also by the following ways:

(i) By lapse of time [Section 6(2)].

(ii) By non-fulfillment by the offeree of a condition precedent to acceptance [Section 6(3)].

(iii) By the death or insanity of the proposer.

(iv) If a counter offer is made to it.

(v) Deemed acceptance.

24. Mr. Kamal offered to sell his house to Mr. Vimal for 15,00,000. Mr. Vimal accepted the offer by post. On the very next day Mr. Vimal sent a telegram revoking the acceptance which reached Mr. Kamal before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. Kamal at the same time?

Answer:

Communication and revocation of acceptance when complete: The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Referring to the above provisions:

(i) Yes, the revocation of acceptance by Mr. Vimal (the acceptor) is valid.

(ii) (If Mr. Kamal opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

[PP, Dec 2015]

[5 Marks]

25. Mr. A offers to buy Mr. B's house on certain terms. Acceptance was to be sent by IB within 6(six) weeks. B within one week sent a letter accepting the offer with an alteration of one term. A then withdrew his offer. B writes again within three weeks accepting the terms originally proposed by A. Hence is this a valid contract?

Or

W offered to sell his house to M for 40 lakhs. M replied purporting to accept the offer and enclosed a cheque for 20 lakhs. He also promised to pay the balance amount in twenty equal instalments. Examine the validity of the contract.

Or

A offers to buy B's House on certain terms. An answer is to be given within six weeks. B within this time writes to A a letter purporting to accept but in fact containing a material alteration of the terms. A then withdraws his offer. B writes again still within 6 weeks correcting the error in his first letter and accepting the terms originally proposed by A. Is there a contract between A and B? Give reasons for your answer.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



Answer:

A proposal accepted by the offeree is termed as acceptance. An offer can be accepted by the person to whom the offer is made.

As per Section 7(1) of Indian Contract Act, 1872, acceptance must be absolute and unqualified. A qualified acceptance or a counter offer, offering different terms amounts to counter proposal leading to rejection of offer i.e. offer comes to an end. No contract would come into existence even if the offeree wants to subsequently accept the original offer after withdrawal of offer as it will be deemed to have lapse. In given case, B made a qualified acceptance by altering certain terms of the original offer. So, A withdraws the same. Then, B subsequently changes his mind and wants to accept the terms originally offered by A within the specified time. This will not give rise to any contract since the original offer of A will be deemed to have been lapsed.

Moreover, it is not binding on the part of A to keep his offer open for six weeks. The contract is not valid. Now, if I still wants to purchase As house, he will have make a new offer to A or wait for As new offer

In 2nd question also there is alteration of terms making acceptance qualified resulting in an invalid contract.

26. X of Agra sends a letter by post to Y of Delhi offering to sell his car for Rs. 1,00,000. This letter is posted on 1st January and reaches Y on 7th January Y sends his acceptance by post on 10th January but X receives this letter of acceptance on 15th January. Answer each of the following questions.

- When is the communication of offer complete?
- When is the communication of acceptance complete as against the offeror?
- When is the communication of acceptance complete as against the acceptor?
- If X sends a telegram on 8th January revoking his offer, and this telegram reaches Y before the letter of the acceptance is posted. Is revocation of offer is valid
- If Y sends a telegram on 14th January revoking his acceptance and this telegram reaches X before the letter of acceptance is received by X. Is revocation of acceptance is valid?

Answer:

- The communication of offer is complete on 7th January because the letter containing the offer reaches the offeree on 7th January.
- The communication of acceptance is complete as against the offeror on 10th Jan. because the letter of acceptance is posted on 10th January.
- The communication of acceptance is complete as against the acceptor, on 15th Jan. because the letter of acceptance is received by the offeror on 15th January.
- X's revocation is valid because X can revoke his offer at any time before the letter of acceptance is posted by the offeree.
- Y's revocation is valid because Y can revoke his acceptance at any time before the letter of acceptance is received by the offeror.

3. CAPACITY TO CONTRACT

[MTP Dec 2019 & Dec 2022]

[5 Marks]

27. What is a sound mind for the purpose of contracting? Describe other disqualified persons.

Or

Discuss the categories of persons who are disqualified from entering into Contract other than minor and a person of unsound mind, under Indian Contract Act, 1872.

Answer:

- A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.
- A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person, who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

OTHER DISQUALIFIED PERSONS: The persons who are disqualified from entering into contract due to certain other reasons may be from legal status, political status or corporate status. Some of such categories of persons are given below:

- Alien Enemy:** An agreement with an Alien Enemy is void. But agreement with an Alien friend is perfectly valid and enforceable. When the Government of an Alien is at war with the Government of India, the alien is called Alien enemy, who cannot enter into any contract with any Indian citizen without the permission of Government of India as the same is against the public policy. Contract entered into with an alien before war is put into suspension during the duration of war.
- Foreign Sovereign and Ambassadors:** Foreign sovereigns and their representatives enjoy certain privileges and immunities in every country. They cannot enter into contract except through their agents residing in India. They can sue the Indian citizen but an Indian citizen cannot sue them.
- Convicts:** A convict cannot enter into a contract while he is undergoing imprisonment.
- Insolvents:** An insolvent person is one who is unable to discharge his liabilities and therefore has applied for being adjudged insolvent or such proceedings have been initiated by any of his creditors. An insolvent person cannot enter into any contract relating to his property.
- Company or Statutory bodies:** A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its Memorandum of Association.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



[PP, Dec. 2017, July 2023, MTP Dec 2017 & MQP June 2023] [7 Marks]

28. What are the position of Minor's agreement and effect thereof?

Or

Who is a minor? Describe the position of minor's agreement and effect.

Or

As per Indian Contract Act, 1872, what are the position of Minor's agreement and effect thereof?

Answer.

As per section 3 of the Indian Majority Act of 1875, every person in India is a minor if he has not attained the age of 18 years of age. However in case of a minor of whose person or property or both a guardian has been appointed under the Guardian and Wards Act, 1890 or whose property is under the superintendence of any court of wards before he attains 18 years of age is 21 years As per Section 11 of Indian Contract Act, 1872, the parties to an agreement must be capable of entering into a contract.

- An agreement with a minor is void-ab-initio.
- The law of estoppels does not apply against a minor: It means a minor can always plead his minority despite earlier misrepresenting to be a major.
- Doctrine of Restitution does not apply against a minor. The restitution of money under Section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void-ab-initio. Similarly, no relief can be granted under Section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.
- No Ratification on Attaining Majority: Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.
- Contract beneficial to Minor - A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.
- Minor as an agent - A minor can be appointed an agent, but he is not personally liable for any of his acts.
- Minor's liability for necessities If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable.
- A minor cannot be adjudged insolvent as he is incapable of entering into a contract.
- Where a minor and an adult jointly enter into an agreement with another person the minor is not liable and the contract can be enforced against the major person.

EXTRA THEORY QUESTIONS

29. Write short notes on 'Capacity of the parties to a contract'

Answer

Capacity of the parties to a contract: Section 10 of the Indian Contract Act must be requires that the parties competent to contract. Competence to contract is defined in section 11

Capacity to contract means the legal ability of a person to enter into a valid contract. Section 11 of the Indian Contract Act specifies that every person is competent to contract who

- a) is of the age of majority according to the law to which he is subject and
- b) is of sound mind and
- c) is not otherwise disqualified from contracting by any law to which he is subject is competent to contract.

A person competent to contract must fulfil all the above three qualifications.

Qualification (a): It refers to the age of the contracting person i.e. the person entering into contract must be of 18 years of age and in case of matters of property must have completed 21 years. In other words he should not be a minor.

Qualification (b): It requires a person to be of sound mind i.e. he should be in his senses so that he understands the implications of the contract at the time of entering into a contract A lunatic, an idiot, a drunken person or under the influence of some intoxicant is not supposed to be a person of sound mind.

Qualification (c): It requires that a person entering into a contract should not be disqualified by his status, in entering into such contracts. Such persons are: an alien enemy, forcing sovereigns, convicts, corporations and married women. They are disqualified unless they fulfil certain formalities required by law.

Contracts entered by persons not competent to contract are not valid

30. Briefly answer: Who are disqualified by law from entering into a valid contract?

Answer:

Persons disqualified by law from entering into a valid contract

- a) person disqualified by any law to which he is subject.
 - 1. An alien enemy
 - 2. Foreign sovereigns and accredited representatives of Foreign States.
 - 3. Convicts.
 - 4. Insolvent
- b) Under Article 299 of the Constitution of India the President of India, the Governor of State and their agents are not personally liable for the contracts made for the concerned Government.
- c) Incorporated bodies may enter into contracts through their agents or officers but such agents or officers are not personally liable.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



- d) If a person or Public body is entrusted by the legislation with certain powers and duties, those persons cannot enter into any contract or take any action incompatible with the due exercise of the power or discharge of their duties.

31. A minor is liable to pay for the necessities of life supplied to him.

Answer:

"A minor is liable to pay for the necessities of life supplied to him." The case of necessities of life supplied to a minor is governed by Section 68 of the Contract Act which provides that "if a person incapable of entering into a contract or anyone when he is legally bound to support is supplied by another person with necessities 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"

Thus, a minor is not personally liable for the payment of necessities supplied to him, the payment for such necessities can be claimed only out of the property of the minor. Therefore, if the minor has no property, the supplier will lose the price of necessities. What constitutes necessities shall be determined with reference to the status and the circumstances of a particular minor.

Food, clothing and shelter may be taken as simple examples of necessities but necessities would also include minor's medical expenses, cost of defending a minor's civil or criminal proceedings, provision for education, etc., Loans taken by minor to obtain necessities also bind a minor. It should also be noted that the parent or guardian of a minor cannot be held liable for any goods supplied to a minor unless those goods are supplied to a minor as the agent of the parent or guardian.

32. Comment: Ratification of a minor's agreement is not allowed after attaining the majority by him

Or

Briefly answer: Doctrine of Ratification does not apply in full force against a minor.

Answer:

Doctrine of Ratification does not apply in full force against a minor: As a minor's agreement is void, he cannot validate it by ratification on attaining majority. For instance, a minor borrows money and executes a promissory note. On attaining majority, if he executes a fresh promissory note, it is also void being without consideration. But a person who supplies necessities of life to a minor or to one whom the minor is legally bound to support, according to his status in life, is entitled to be reimbursed from the property of the minor not on the basis of any contract but on obligation resembling a contract (Section 68: Indian Contract Act, 1872). Further, since an agreement with minor is void ab initio even the other party who might be a competent person cannot enforce the terms of the agreement entered into by him with a minor neither during minority or on minor's attaining majority taking the shelter of the doctrine of ratification.

Thus it may be concluded that the doctrine of ratification does not apply to a minor in full force.

33. When may a person be treated as of unsound mind to form a contract?

Answer

Contract by a person of unsound mind: A person is said to be of unsound mind for the purpose of making a contract, if at the time when he makes it, he is not capable of understanding it, and of forming a rational judgement as to its effect upon his interests.

A person is of sound mind when he is capable of understanding the effect of the terms of the contract and of functioning a rational judgement as to its effect upon his interests.

Thus, a person is of unsound mind if he:

- cannot understand the contract when it is being made; and
- cannot form a proper and reasonable judgement as to how the contract will affect his interests.

Generally, the law presumes every person to be of sound mind unless it is alleged otherwise. A person of unsound mind is not competent to contract.

According to section 12 of the Indian Contract Act a person may be treated as of unsound mind to form a contract if he is:

- Idiot, who has completely lost his mental faculties of thinking,
- Lunatic, a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. But during his lunacy he is incapable to form a contract.
- Drunken or intoxicated person when he is under drunkenness or intoxication

34. Distinguish between 'Coercion and Undue influence'.

Answer:

Distinction between 'Coercion and Undue influence': In both the cases of coercion and undue influence the consent of one of the party is not free and therefore the contract is voidable at the option of the party whose consent was not free.

The following are the main points of difference between the two:

Difference between Coercion and Undue influence:

Basis of difference	Coercion	Undue Influence
Nature of action	It involves the physical force or threat. The It involves moral or mental pressure. aggrieved party is compelled to make the contract against its will	It involves moral or mental pressure
Involvement of criminal action	It involves committing or threatening to commit and act forbidden by Indian Penal Code or detaining or threatening to detain property unlawfully.	No such illegal act is committed or a threat is given
Relationship between parties	It is not necessary that there must be some sort of relationship between the parties	Some sort of relationship between parties is absolutely necessary.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



Exercised by whom	Coercion need not proceed from the promisor nor need it be the directed against the promisor. It can be used even by a stranger to the contract.	Undue influence is always exercised between parties to the contract
Enforceability	The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside or enforce it in a modified form.
Position of benefits received	In case of coercion where the contract is rescinded by the aggrieved party, as per Section 64, any benefit received has to be restored back to the other party.	The court has the discretion to direct aggrieved party to return the benefit in whole or in part or not to give any such received directions.

35. Distinguish between Fraud and Misrepresentation

Answer:

Distinction between Fraud and Misrepresentation: material Fraud means deliberate misstatement of a fact or active concealment of a material fact or any other act fitted to deceive.

Misrepresentation is incorrect or false statement or breach of duty giving an advantage to the person it but committing the falsity or failure is not due to any desire to deceive the other party. It is innocent. The believes party making it to be true.

The exact points of distinction between the two are:

Basis	Fraud	Misrepresentation
1) Intention	The intention is clearly to deceive the other Fraud is deliberate or willful.	There is misstatement or concealment of material fact or facts essential to the contract, without any intention to deceive the other party.
2) Belief	The person making the suggestion does not believe it to be true	In misrepresentation, he believes it to be true.
3) Rescission & Damages	The remedy available to the aggrieved party is not limited to rescission claim damages.	The aggrieved party can rescind the contract & sue for restitution. here can be no suit for damages.
4) Discovery of Truth	The contract is voidable even though the aggrieved party had the means of discovering the truth with ordinary diligence.	The aggrieved party cannot avoid the contract if it had the means to discover the truth with ordinary diligence.

36. Explain the essential elements & its effect of the fraud.

Answer:

Essential elements of the fraud:

1. There must be a representation or assertion and it must be false. However, silence may amount to fraud or an active concealment may amount to fraud.
2. The representation must be related to a fact.
3. The representation should be made before the conclusion of the contract with the intention to induce the other party to act upon it.
4. The representation or statement should be made with a knowledge of its falsity or without belief in its truth or recklessly not caring whether it is true or false.
5. The other party must have been induced to act upon the representation or assertion.
6. The other party must have relied upon the representation and must have been deceived
7. The other party acting on the representation must have consequently suffered a loss.

Effects: When the consent to an agreement is caused by the fraud, the contract is avoidable at option of the party defrauded and he has the following remedies:

- a) He can rescind the contract within a reasonable time.
- b) He can sue for damages.
- c) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made had been true.

37. Comment on "A false suggestion amounting to fraud may be illustrated thus"

Answer:

A false suggestion amounting to fraud may be illustrated thus:

1. The director of a company issued a prospectus containing a statement of facts which were false to his knowledge. It was held that a person who had taken the shares on the faith of the prospectus could repudiate the contract on the ground of fraud.
2. **The following is an instance of active concealment:** B, having discovered a vein of ore on the estate of A, adopts means to conceal the existence of the ore from A and A, through ignorance, agrees to sell the estate to B at a price which was admittedly an undervaluation. The contract would be voidable at the option of A on the ground of fraud.
3. Similarly, **the buying of goods with the intention of not paying the price therefore is fraud.** Certain acts and omissions have been specifically declared to be fraudulent by various Acts, For example, under Section 55 of the Transfer of Property Act, the seller of immovable property is required to disclose to the buyer any material defect in the property to be sold and non-disclosure amounts to fraud. Any other act, fitted to deceive, also will constitute fraud.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



38. What do you understand by the contracts 'Uberrimae Fidei'?

Answer:

Contracts Uberimae fidei: These are the contracts based on utmost good faith and if utmost good faith is not observed they may be avoided. In such contracts, the law imposes a duty upon the party or parties to the contract to disclose all material facts and information pertaining to the contract. Nondisclosure of it may vitiate the contract on the ground of fraud. Such contracts are as under:

- Contract of insurance of all kinds:** The insured must inform the insurer all material facts fully and correctly.
- Company prospectus inviting public to subscribe for its shares.** The obligation for disclosure of all material facts is statutory. Nondisclosure of it will tantamount to fraud for which the committing party to the contract will be responsible
- The seller of land** is under an obligation to disclose the defects in the title over the property.
- When members of a family make agreements** or arrangements for the settlement of property each member must make full and correct disclosure of every material fact of which he is having the knowledge.
- In contract of marriage engagements**, both the parties must observe good faith and disclosure of all material facts regarding age, disease, prior marriage etc. Otherwise the party deceived or misrepresented would be justified in avoiding the engagement.

39. Distinguish between 'Unilateral' and 'Bilateral' mistake.

Answer:

Distinction between Unilateral' and Bilateral' mistake.'

When only one of the party when both to a contract is under a mistake, it is called unilateral mistake. On the other hand, the contracting parties misunderstand each other and are at cross purposes, mutual mistake. there is a bilateral or The following are the points of differences between the two:

- In case of **unilateral mistake**, mistake arises only on the part of one of the parties while bilateral mistake arises on the part of both the parties to the contract.
- Where only **one of the parties is under a mistake** as to a matter of fact, the contract is not void except when there is a mistake regarding the identity of the nature of person contracted with and when there is a mistake as to the contract. But in case of bilateral mistake as both the parties are under a mistake as to a matter of fact essential to the agreement, the agreement is void (Section 20)

CASE STUDIES

[PP. June 2024]

[7 Marks]

40. MR. Amal who is so badly drunk that he cannot sit on a chair properly, enters into an agreement with Mr. Bimal on 15/07/2023, in the evening to sell his office space to him within 15/08/2023. Next day Mr. Amal declares that he was over drunk last night and now he is not willing to transfer the office space to Mr. Bimal. Now, Mr. Bimal is arguing that as Mr. Amal has already signed the agreement, he will have to transfer the property in his name. Decide whether the contract is valid and present your expert opinion.

Answer:

As per Section 11 of Companies Act, 2013 every person is competent to contract who is of the age of majority and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

As per Section 12 of Companies Act, 2013, a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it he is

- Capable of understanding it and
- Capable of forming a rational judgment as to its effect upon his interests.

When a person is in drunken state or is delirious from fever cannot enter into a contract as they cannot form a rational judgment.

A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

In the given case, Mr. Bimal made Mr. Amal sign the agreement to sell his office space to Mr. Bimal when he was fully under the influence of alcohol. On returning to soberness next day Mr. Amal refused to transfer the same.

Mr. Bimal was intoxicated, so any agreement entered by him in situation of intoxication shall have no effect as he was not in a condition to understand or form any rational decision regarding the agreement. Although he is a sane person but due to intoxication he couldn't collect his sanity and it becomes difficult for him to understand or take decision regarding the agreement.

If Mr. Bimal cannot force him to transfer the office space as signed under the agreement. The agreement shall be void.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



4. CONSIDERATION

[MTP, Dec 2022]

[5 Marks]

41. Short note on: Privity of Contract.

Answer:

The doctrine of privities of contract means that **a contract is between the parties only and no third person can sue upon it**. It means that **a stranger to contract cannot sue upon it**. A person who is not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. In India the common law doctrine of privities of contract is applicable.

Consideration for an agreement may proceed from a third party, but the third party who is a stranger to the agreement cannot sue on the agreement. A person who is a party to the contract alone can enforce the legal rights arising there from. So a stranger to contract as a rule cannot sue upon the contract.

In the course of time, the courts have introduced a number of exceptions to rule of privities of contract as follows:

- **Beneficiary of a trust:** A trust is created for the benefit of a beneficiary. Hence, the **beneficiary can enforce the provisions of the trust** even though he is a stranger to the contract.
- **Provision in marriage settlement:** A stranger to the contract can sue on the contract where a **provision is made for him in marriage settlement**.
- **Provision for maintenance or marriage expenses of female members under a family arrangement:** In case a provision is made for the marriage or maintenance of a female member of the family on the partition of a Hindu undivided family, the **female member can enforce the promise** though she may be a stranger to a contract.
- **Assignee of a contract:** The benefits of a contract may be assigned. **The assignee of a contract can enforce the benefits** of a contract though he is not a party to it.
Example: 'A' assigns his insurance policy in favour of his wife. The wife can enforce it although she is not a party to it.
- **Acknowledgement of liability:** Where the **promisor either by his conduct or acknowledgement or by part payment or by estoppel creates privity of contract** between himself and the stranger, **the stranger can sue**.
Example: A pays B 500 to be given to C, B acknowledges to C that he holds that amount for him. C can recover the amount from B.
- **Agency contract:** Contracts which are **entered into by the agent on behalf of the principal can be enforced by the principal** even though he is not a party to the contract.

[IPP, June 2015, Dec 2017, June 2019, July 2023] [5 Marks]

42. Agreements without consideration are also valid. If you agree state the circumstances.

Or

No consideration, no contract'. - state the exceptions to it.

Or

Short note on: Agreement without consideration.

Answer:

As per Section 25 of Indian Contract Act, 1872, an agreement made without consideration is void.

The following are the exceptions to this rule:

- **Written and registered agreements arising out of love and affection:** An agreement made without consideration is valid if, It is **expressed in writing** and **registered** and is **made on account of nature love and affection** between parties standing in a near relation to each other
- **Promise to compensate for voluntary services:** A promise made without consideration is valid if it is a **promise to compensate wholly or in part**, a person **who has already voluntarily done something for the promisor** or something **which the promisor was legally compelled to do**.
- **Written promise to pay time-barred debt:** A promise to pay wholly or in part, a debt which is barred by the law of limitation can be enforced **if the promise is in writing and is signed by the debtor or his authorized agent**.
- **Completed gifts i.e. gifts given and accepted:** If a person gives certain properties to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground that there was no consideration:
- **No consideration is required to create an agency**
- **Bailment**
- **Charitable subscription**
In these circumstances, in spite of the fact there is no consideration the contract shall still be valid

QUESTION BANK

CA AKASH AGARWAL

ICA, 1672

EXTRA THEORY QUESTIONS

43. What is Consideration? Discuss briefly the legal requirements of valid consideration.

Or

What do you understand by the term 'consideration'?

Answer:

Meaning of consideration: Consideration is an essential element of a valid contract. It is the price agreed to be paid by the promisee for the obligation of the promisor.

Thus, if A agrees to sell his books to B for Rs.100, B's promise to pay Rs.100 is the consideration for A's promise to sell his books and A's promise to sell the books is the consideration for B's promise to pay Rs.100.

For every valid contract consideration is very essential. But there are certain exceptions to this rule which have been incorporated under section 25 of the Indian Contract Act.

44. What are the "Legal requirements of valid consideration?"

Answer:

Legal requirements of valid consideration may be enumerated as under:

1. Section 2(d) of the Indian Contract Act emphasises that consideration must move at the desire of the promisor. Any act done at the desire or request of the third party or voluntary acts would not constitute a valid consideration.
2. Consideration must be lawful and should not be forbidden by law.
3. Consideration must be real and not illusory. If it is physically impossible, vague or legally impossible, the contract cannot be enforced.
4. Consideration must be of some value in the eyes of law. The Supreme court has laid down that consideration shall be something which not only the parties regard but the law can also regard as having some value.
5. The consideration must not be the performance of existing duties e.g. (i) legal obligations or (ii) contractual obligations.
6. The consideration need not be adequate. In other words an inadequate consideration does not render a contract void.
7. The consideration may be furnished by the promisee or any other person. So long as there is consideration for a promise, it is immaterial who has furnished it.
8. The consideration must be either positive or negative (See the definition).
9. Consideration may be forbearance to sue.
10. The consideration may be past, present or future.

45. Distinguish between Executed and Executory Consideration.

Answer:

Distinction between Executed and Executory Consideration: Executed and Executory Consideration: A consideration which consists in the performance of an act, is said to be executed. When it consists in a promise to do something, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.

For example, in a contract of fire insurance, the policy holder pays the premium and the insurance company in return promises to make good the value of the insured property, if it is damaged. Here the promise of the insurance company is made in exchange of the consideration of the payment of premium by the policy holder and vice-versa. To give another example, A pays Rs.5,000/- to B and B promises to deliver to him a certain quantity of sugar within a month. In this case, A pays the amount whereas B merely makes a promise. Therefore, the consideration paid by A is executed, whereas the consideration promised by B is executory. An actual forbearance to exercise a right may be a good executed consideration, provided the forbearance is suffered at the request of the promiser.

46. Comment on: Consideration may be past, present or future.

Answer:

Consideration may be past, present or future: According to the words used in Section 2(d) consideration may be past, present or future. These words are "has done or abstained from doing (i.e. past) or does or abstains from doing (i.e. present), or promises to do or to abstain from doing (i.e. future) some thing"

When the consideration by a party for a present promise was given in the past i.e. before the date of the promise, it is said to be the past consideration.

When the consideration is given simultaneously with the promise, i.e. at the time of the promise, it is said to be the present consideration. In a cash sale, for example, the consideration is present or executed.

When the consideration from one party to the other is to pass subsequently to the making of the contract, the consideration is future or executory.

47. Comment on: Consideration may be past, present or future.

Answer:

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QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



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When the consideration from one party to the other is to pass subsequently to the making of the contract, the consideration is future or executory.

48. State the exceptions to the rule that "a stranger to a contract cannot sue".

Answer:

Doctrine of privity of contract: It is a general rule of law that only parties to a contract may sue and be sued on that contract. This rule is known as the "doctrine of privity of contract". Privity of contract means relationship subsisting between the parties who have entered into contractual obligations. It implies a mutuality of will and creates a legal bond or tie between the parties. There are two consequences of doctrine:

1. A person who is not a party to a contract cannot sue upon it even though the contract is for his benefit and he provided consideration.
2. A contract cannot confer rights or impose obligation arising under it on any person other than the parties to it (Dunlop Pneumatic Tyres Ltd. v. Selfridge Co. Ltd.).

The following are the exceptions to the general rule that a stranger to a contract cannot sue:

1. A trust or charge.
2. Marriage settlement, partition or other family arrangements.
3. Acknowledgement or estoppel.
4. Assignment of a contract.
5. Contracts entered into through an agent.
6. Covenants running with the land.

49. All consideration or objects of an agreement are not lawful. Justify.

Answer:

Yes, the consideration or object of an agreement is lawful unless it is forbidden by Law, or (2) is of such a nature that if permitted it would defeat the provisions of any law or (3) is fraudulent or implies injury to the person or (4) property of another or (5) the court regards it as immoral or as opposed to public policy.

50. In order to constitute a valid contract, consideration between two parties must be adequate.

Answer:

The law simply provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned as to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced. (Bolton Vs. Madden).

CASE STUDIES

[PP. June 2015 & Dec 2019]

[6 Marks]

51. Anita and Binita are friends; Binita treats Anita during Anita's illness. Binita does not accept payment from Anita for treatment and Anita promises Binita's son Sunit to pay him 12,000. Anita being in poor circumstances is unable to pay. Sunit sues Anita for the money. Can Sunit recover?

Or

Anita and Sonali are friends; Sonali treats Anita during Anita's illness. Sonali does not accept payment from Anita for treatment and Anita promises Sonali's daughter Tania to pay her 75,000. Anita being in poor circumstances is unable to pay. Tania sues Anita for the money. Can Tania recover? Offer your views based on provisions of the Indian Contract Act, 1872.

Answer.

As per Section 2(d) of the Indian Contract Act, 1872, consideration to be valid must be move at the desire of the promisor.

Moreover, as per Privity of Contract, a third party can sue any party, if the third party is the beneficiary.

As per exceptions to Section 25 of Indian Contract Act, 1872, agreement can be made without consideration if it is a promise to compensate a person who has already voluntarily done something for the promisor. Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor. In given case, the agreement between Tania and Anita is not a contract in the absence of consideration. Tania's mother Sonali, voluntarily treats Anita during her illness.

Now, as per exception of Section 25, Sonali's daughter, Tania to whom the promise was made, did nothing for Anita, so Anita's promise is not enforceable even under the exception.

No, Tania cannot recover the money from Anita. She can't even sue Anita as she is not a third party benefitting to it.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



52. Comment on the following statement based on legal provision: "A" saved life of "B", who was drowning. Later "A" demanded remuneration from "B" for saving him since saving of life was valid consideration, "A" would succeed?

Answer:

Consideration should be at the desire of promisor. 'A' can not demand payment for his service to save 'B's' life because (i) it was voluntary gratuitous act and not at the desire of 'B'.

Where, however, a 'Person' lawfully does anything for "another person" not intending to do so gratuitously and such other persons enjoys the benefit thereof the "another person" bound to make compensation to the "person" in respect of the thing so done.

53. Referring to a quarrel and disagreement between husband and wife, the husband agreed to execute and register a document in favour of his wife to transfer one of his properties to his wife. Later on husband refused. Whether wife can enforce?

Answer:

Wife cannot succeed. Sec. 25 (1) of Indian contract Act provides that a contract without consideration shall be valid if made out of natural love and affection between parties standing in a near relation to each other through a written and registered document. Mere nearness of relation or relationship does not impart natural love and affection. In this case since the promise to transfer property is made after reference to quarrels & disagreement, the contract shall not be enforceable as natural love and affection was absent.

5. FREE CONSENT

[MTP Dec 2022]

[5 Marks]

54. Write Short Notes on Coercion

Answer:

The term "Coercion" has been defined in Section 15 of the Indian Contract Act, 1872 as the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation: It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed. From the above definition of coercion given in section 15, consent is said to be caused by coercion, when it is obtained by any one of the following:

Committing or threatening to commit any act forbidden by Indian Penal Code;

Unlawful detaining or threatening to detain the property of another person.

Coercion may come from a person party to the contract or even third person not connected with the contract directly.

[PP Dec 2013]

[4 Marks]

55. Consequences of misrepresentation.

Answer:

As per Section 19 of Indian Contract Act, 1872, if consent of any party is obtained by using coercion, undue influence, misrepresentation, the agreement is voidable at the option of the aggrieved party.

➤ **Right to insist upon performance i.e. to continue**

The party whose consent was caused by misrepresentation may if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representation made had been true.

➤ **Right to rescind the contract**

The party whose consent was caused by misrepresentation cannot rescind the contract in the following cases:

➤ The party had the means of discovering the truth with ordinary diligence. The party gave the consent in ignorance of misrepresentation.

➤ The party after becoming aware of the misrepresentation, takes a benefit under the contract & if chooses to rescind then he will have restore the benefit availed.

QUESTION BANK

CA AKASH AGARWAL

ICA, 1072

- Where an innocent third party, before the contract is rescinded, acquires for consideration some interest in the property passing under the contract

[PP June 2018]

[5 Marks]

56. Short note on: Undue Influence

Answer:

As per Section 16 of Indian Contract Act, 1872, undue influence includes:

- A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
- In particular and without prejudice to the generality of the forgoing principle, a person is deemed to be in a position to dominate the will of another.
 - Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other, or
 - Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress;
 - Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

[PP. June 2017, MTP Dec 2019 & Dec 2022]

[8 Marks]

57. Define fraud under India contract Act. State whether silence amount to fraud

Or

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is fraud. - Offer your views.

Or

Does silence amount to fraud? Explain with exceptions and types of silence amount to fraud.

Answer:

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- The active concealment of a fact by one having knowledge or belief of the fact;
- A promise made without any intention of performing it;
- Any other act fitted to deceive;

- e) Any such act or omission as the law specially declares to be fraudulent.

Does silence amount to fraud:

At times one of the parties to a contract makes silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors?

Explanation to Section 17 of the Indian Contract Act provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them, it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Thus, we can say that there is exception to the rule that mere silence does not amount to silence. These two exceptions are provided in explanation to section 17 and these are as under.

- When there is a duty to speak.
- Where silence is equivalent to speech.

However, in the following two types of cases, silence amounts to fraud, as held by the courts in various cases:

- Where there is change in circumstances- A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly, this must be communicated to other party otherwise it amount to fraud.
- When there is half-truth Even when a person is not bound to disclose a fact, he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

[PP Dec. 2019]

[7 Marks]

58. Short Note: Misrepresentation

Answer:

A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally, it is misrepresentation and when made intentionally or willfully it is fraud. Misrepresentation has been defined in section 18 of the Indian Contract Act 1872 as under:

"Misrepresentation" means and includes—

- The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

QUESTION BANK

CA AKASH AGARWAL

ICA, 1872

- b) Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;
- c) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

[PP Dec. 2024]

[7 Marks]

59. "Two or more persons are said to be consent when they agree upon the same thing in the same sense" – Discuss with reason the consequences of the absent of consent and free consent.

Answer:

"Two or more persons are said to consent when they agree upon the same thing in the same sense." - [Sec 13]. There will be flaw in consent if it is not free consent. If the parties have not agreed upon the same thing in the same sense, there is no real consent and hence no contract is formed.

As per section 14 of the Indian Contract Act, 1872 consent is said to be free when it is not caused by:

- a) **Coercion (Sec 15):** The term "Coercion" has been defined in Section 15 of the Act as the committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.
- b) **Undue influence (Sec 16):** Section 16 of the Indian Contract Act defines undue influence as under:
 - A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
 - In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another –
 - Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
 - Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
 - Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other
- c) **Fraud (Sec 17):** As per section 17 of the Indian Contract Act:
"Fraud" means and includes any of the following acts committed by a party to a contract, or

with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- The suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- The active concealment of a fact by one having knowledge or belief of the fact;
- A promise made without any intention of performing it;
- Any other act fitted to deceive;
- Any such act or omission as the law specially declares to be fraudulent.

d) **Misrepresentation (Sec 18):**

A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as misrepresentation. It must relate to some fact which is material to the contract. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation when wrongly made either innocently or unintentionally is a misrepresentation. When it is made innocently or unintentionally, it is misrepresentation and when made intentionally or wilfully it is fraud.

e) **Mistake**, subject to the provisions of Sec 20, 21 and 22:

Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act. Mistake can be –

- Mistake of law, or (Section 21)
 - mistake of law of the country
 - mistake of law of a foreign country
- Mistake of fact (Section 20)
 - Bilateral mistake, or
 - Unilateral mistake

Effect of absence of free consent

- a) If consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the contract is voidable at the option of the party whose consent was not free
- b) If both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement. (i.e., mistake of Indian law) (section 21), then the agreement is void.
- c) A contract is not voidable merely because one of the parties was at mistake (i.e., unilateral mistake) (section 22).

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



EXTRA THEORY QUESTIONS

60. When is the 'Consent said to be not free?

Answer:

When consent is not freely given: Section 13 of the Indian Contract Act, 1872, defines the term consent as, "two or more persons are said to consent when they agree upon the same thing in the same sense". It means that the contracting parties must have identity of minds i.e. consensus ad idem. Section 10 of the Act says that all agreements are contracts if they are made by the free consent of the parties competent to contract for lawful consideration and with a lawful object. It means that not only there should be consent, but the consent of the parties must also be free. The consent is said to be not free when it is vitiated by coercion, undue influence, fraud, misrepresentation or mistake. In such a case the contract becomes avoidable at the option of the whose consent is not free

61. Define the terms "Consensus ad idem"

Answer:

Consensus ad idem: The essential feature of a contract is that the parties proposer and about the same acceptor agree thing in the same sense and at the same time. There should be meeting of minds. This minds identity of is called consensus-ad-idem. It is achieved by the proposer communicating the offer and the offeree communicating his acceptance. The acceptance when communicated completes the contract for at that point of time, there is consensus-ad-idem. This is the theory underlying the formation of contract.

62. Write short notes on 'Free consent'.

Answer:

Free consent: Consent is said to be free when it is not caused by:

1. Coercion as defined in S.15 of the Indian Contract Act, or
2. Undue Influence as defined in S. 16 or
3. Fraud as defined in S. 17, or
4. Misrepresentation as defined in S.18, or
5. Mistake, subsection to the provisions of S.20,21, and 22.
6. When consent to an agreement is caused by coercion, fraud, misrepresentation, or undue influence, the agreement is a contract avoidable at the option of the party whose consent was so caused. When the consent is vitiated by mistake, the contract becomes void.

6. OTHER ESSENTIAL ELEMENTS

[MTP, June 2020 & June 2023]

[5 Marks]

63. When is consideration said to be against public policy?

Answer:

A consideration would be considered to be against a public policy in the following cases:

- a) Agreement for trading with enemy
- b) Agreement interfering with personal liberty
- c) Agreement interfering with parental duties
- d) Agreement interfering with marital duties
- e) Agreement interfering with course of justice
- f) Agreement for improper promotion or litigation
- g) Agreement for suppressing prosecution
- h) Agreement to do an act against the duty of a person
- i) Marriage brokerage agreement
- j) Agreement not to bid
- k) Agreement to create monopolies or reduce competition
- l) Agreement for sale of public offices or titles.

[MTP Dec. 2023]

[10 Marks]

64. Under what circumstances the agreement becomes void?

Answer:

According to Section 2(g), an agreement not enforceable by law is said to be void. The following agreements are considered to be void

- a) If considerations and objects are unlawful in part – Section – 24;
- b) Agreements without consideration – Section 25;
- c) Agreement in restraint of marriage – Section 26;
- d) Agreement in restraint of trade – Section 27;
- e) Agreements in restraint of legal proceedings – Section 28;
- f) Agreements void for uncertainty – Section 29;
- g) Agreements by way of wager – Section 30;
- 1) If considerations and objects are unlawful in part – Section – 24:

Section 24 provides that if any part of a single consideration for one or more objects or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void.

Example – A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles, B promises to pay to A salary of ₹10,000/- a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful. This section has no application to a contract which is a single contract and has no contingent part.

2) **Agreements without consideration – Section 25:**

Section 25 provides that an agreement made without consideration is void unless-

- it is in writing and registered – It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
- (2) if is a promise to compensate for something done – It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless
- it is a promise to pay a debt, barred by limitation law – It is a promise, made in writing and signed by the person to be charged herewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

3) **Agreement in restraint of marriage – Section 26:**

Section 26 provides that every agreement by which any one is restrained of the marriage of any person, other than a minor is void.

4) **Agreement in restraint of trade – Section 27**

Section 27 provides that every agreement by which any one is restrained from exercising a lawful possession, trade or business of any kind, is to that extent void. The exception to this section is saving of agreement not to carry on business of which goodwill is sold. One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein. Provide that such limits appear to the Court reasonable, regard being had to the nature of business.

5) **Agreements in restraint of legal proceedings under Section 28**

Section 28 provides that every agreement-

- by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
- which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent. Agreements void for uncertainty.

6) **Section 29** provides that agreements, the meaning of which is not certain, or capable of being made certain are void.

Examples –

- A agrees to sell to B, 'a hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty;
- A agrees to sell to B, 'One hundred tons of oil of specified description known as an article of commerce. There is no uncertainty here to make to agreement void;
- A who is a dealer in coconut oil only, agrees to sell to B 'One hundred tons of oil'. The nature of A's trade affords an indication of the meanings of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil.
- A agrees to sell to B, 'all the grain in my granary at Ramnagar'. There is no uncertainty here to make the agreement void;
- A agrees to sell to B 'One thousand maunds of rice at a price to be fixed by C'. As the price is capable of being made certain, there is no uncertainty here to make the agreement void;
- A agrees to sell to B 'my white horse for ₹500/- or ₹1000/-. There is nothing to show which of the two prices was to be given. The agreement is void. Agreement by way of wager.

7) **Section 30** provides that agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Exception in favor of certain prizes for horse-racing – This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of ₹500/- or upwards, to be awarded to the winner or winners of any horse-race.

Section 294A of the Indian Penal Code not affected – Nothing in this section shall be deemed to legalize any transaction connected with horse-racing to which the provisions of Section 294A of the Indian Penal Code, apply.

[MQP June 2024]

[7 Marks]

65. Inspect, whether an agreement by way of wager is a voidable contract or not.

Answer:

Section 30 provides that agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing – This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of ₹ 500 or upwards, to be awarded to the winner or winners of any horse-race.

Section 294A of the Indian Penal Code not affected – Nothing in this section shall be deemed to legalize any transaction connected with horse-racing to which the provisions of Section 294A of the Indian Penal Code, apply.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



Example: Mr. X had an agreement with Mr. Y regarding the outcome of India Pakistan match. If Pakistan won, he would pay to Mr. Y ₹ 1 Crore. These kind of agreements are wagering agreements and not enforceable in India.

EXTRA THEORY QUESTIONS

66. Write short notes on Unlawful Object

Answer:

Unlawful Object: Consideration or object is unlawful if it is forbidden by law; or it would if permitted defeat the provisions of any law or is fraudulent or involves injury to the person or immoral or opposed to property of another or is section.23 has set on the public limits policy. Every agreement where the object or consideration is unlawful is void. Thus to contractual freedom. Following are examples of because the object is unlawful

- (i) Where A, B & C enter into an agreement to share equally among themselves certain loss acquired by fraud. The gains acquired by fraud or agreement is void because the object being commission of fraud is unlawful.
- (ii) A promises to return the stolen property of 'B' if B would withdraw the criminal case filed agreement is void as its object against him, the namely withdrawing the case would stifling prosecution.

67. Write short notes on 'Maintenance and Champerty'

Answer:

Maintenance and Champerty: The term 'Maintenance' may be defined as the instigation of litigation by providing monetary assistance or otherwise by a person who has no legal interest of his own. The motive is to stir up litigation. 'Champerty' may be defined as a bargain in which a stranger promise to give assistance (monetary or otherwise) to another person in recovering the property, and also promises to share the proceeds obtained by legal action.

Both these agreements are illegal, unlawful, unenforceable and void under the English Law, but in India, they are not necessarily void. In India, an agreement to share the subject of litigation in consideration of providing assistance in good faith is not opposed to public policy. But where advances are made by way of gambling in litigation they are certainly opposed to public policy and therefore void.

68. Discuss the transactions resembling with wagering transactions but are not void.

Answer:

Transactions resembling with wagering transaction but are not void:

- (i) **Chit fund:** Chit fund does not come within the scope of wager (Section 30). number of In case of a chit fund, a certain persons decide to contribute a fixed sum for a amount so contributed specified period and at the end of a month, the is paid to the lucky winner of the lucky draw.
- (ii) **Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- (iii) **Games of skill and Athletic Competition:** Crossword competitions where prizes are awarded puzzles, picture competitions and athletic on the basis of skill and intelligence are the games of skill and hence such competition are valid. According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed Rs. 1,000.
- (iv) **A contract of insurance:** A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

CASE STUDIES

[PP. June 2017 & MTP June 2019]

[6 Marks]

69. Mr. P and Mr. Q bet as to whether there would be rain on a particular day of December. Mr. P promises to pay 5,000 to Mr. Q if there is rain on that day and Mr. Q promises an equal amount to Mr. P if there is no rain on the day. Suppose, there is no rain on that specific day of December and Mr. Q filed a suit for recovery of ₹ 5,000 from Mr. P. Can Mr. Q recover the amount under Indian Contract Act, 1872

Answer:

As per Section 30 of Indian Contract Act, 1872, an agreement by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

In given case, the agreement between Mr. P and Mr. Q is of wagering nature and hence void. Thus, despite of no rain on specific day of December, Mr. Q cannot recover the amount of ₹ 5,000 from Mr. P for the reason of entering into an agreement of a wagering nature.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



[PP. Dec 2017]

[5 Marks]

70. A agreed to become an assistant for five years to B who was a doctor practicing at Chennai. It was also agreed that during the term of agreement A will not practice on his own account in Chennai. At the end of one year, A left the assistantship of B and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether A could be restrained from doing so.

Answer:

As per Section 27 of Indian Contract Act, 1872, any agreement through which a person is restrained from exercising a lawful profession or trade/business is void.

But, an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade. In given case, A agreed not to practice during the term of agreement & as soon as he left, he began to practice leading to breach of contract.

Therefore, the step taken by A is not correct & he can be restrained by an injunction from doing so.

[PP June 2018, July 2023, RTP June 2018]

[5 Marks]

71. Mr. X, a businessman has been fighting a long-drawn litigation with Mr. Y, another businessman. To support his legal campaign Mr. X enlists the services of Mr. Z, a legal expert, stating that an amount of 10 lakhs would be paid, if Mr. Z does not take up the brief of Mr. Y. Mr. Z agrees, but at the end of the litigation Mr. X refuses to pay. Decide whether Mr. Z can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872.

Or

Mr. Shaw an industrialist has been fighting a long-drawn litigation with Mr. Mishra another industrialist. To support his legal campaign Mr. Shaw enlists the services of Mr. Nandu a legal expert stating that an amount of 5 lakhs would be paid, if Mr. Nandu does not take up the brief of Mr. Mishra. Mr. Nandu agrees, but at the end of the litigation Mr. Shaw refuses to pay. Decide whether Mr. Nandu can recover the amount promised by Mr. Shaw under the provisions of the Indian Contract Act, 1872.

Answer:

As per Section 10 of Indian Contract Act, 1872, an agreement must not be one which the law declares to be either illegal or void. It is one of the essentials of a valid contract. Any agreements in restraint of trade, marriage, legal proceedings etc. are void agreements.

In given case, Mr. Z was to be paid by Mr. X for not taking briefing of Mr. Y, which is wrong legally & thus void.

Mr. Z cannot recover the amount of 10 lakhs promised by Mr. X because it is an illegal agreement and cannot be enforced by law

[PP Dec. 2022, RTP Dec 2018]

[10 Marks]

72. A patient in a lunatic asylum can also enter into a valid contract. State the position based on legal provision.

Or

Mr. Ajay is unconscious of his mind when he enters into an agreement with Mr. Vijay on 15th July, 2022, in the evening, to sell his office space to him within 15th October, 2022. Next day Mr. Ajay declares that he was not well and conscious last night and now he is not willing to transfer the office space to Mr. Vijay. Now, Mr. Vijay is arguing that as Mr. Ajay has already signed the agreement he will have to transfer the property in his name. Decide whether the contract is valid.

Answer:

As per Section 12 of Indian contract Act, 1872, a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it,

- He is capable of understanding it and
- Is capable of forming a rational judgment as to its effect upon his interests.

A person, who is usually of sound mind, but occasionally of unsound mind, may make a contract when he is of sound mind.

A sane man, who is delirious from fever or who is drunk and he cannot understand the terms of contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts. Even if such person makes a contract the contract shall be void.

As Mr. Ajay was not well & conscious enough to understand the agreement made with Mr. Vijay, the contract is not valid. He can refuse to transfer the space in his office to Mr. Vijay.

Thus, the contract is not valid.

Therefore, a patient in a lunatic asylum may enter into a valid contract at times when he is of sound mind.

[PP Dec. 2014]

[4 Marks]

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

Answer:

As per Section 11 of Indian Contract Act, 1872, the parties to an agreement must be capable of entering into a contract or else the agreement is void.

It is also to be noted that a person of unsound mind, who has intervals of sound mind can enter into a contract during such period.



QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



As per Section 68 of Indian Contract Act, 1872, if necessities (goods suitable to the condition of the living of such person and not luxuries) are supplied to a person, who is incompetent to contract, the supplier is entitled to claim the reimbursement from the estate of such person. A supplier would also be entitled to recover the price of necessities supplied to wives or minor child of the incompetent person, as he is legally bound to support them.

The incompetent person's property is liable for the necessities supplied, not the incompetent person. If there is no property nothing would be realizable.

The supplier must prove not only that the goods were supplied to the person who was a minor or a lunatic, but also that they were suitable to his requirement at the time of sale and delivery.

In given case, the burden to prove that H is lunatic and he was of unsound mind when he entered into the contract lies on the seller.

The jeweller would not be entitled for the claim, as a diamond set worth 10 lakhs for the wife of H, is not a necessity and is surely a luxury.

[PP Dec. 2017, Dec 2019]

[6 Marks]

74. P induced Q to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Q complained that there were many defects in the motorcycle. P proposed to get it repaired and promised to pay 40% cost of repairs. After few days, the motorcycle did not work at all. Now Q wants to rescind the contract. Decide giving reasons.

Or

Define Misrepresentation under the Indian Contract Act, 1872.

Or

Short note on: Misrepresentation.

Answer.

As per Section 18 of the Indian Contract Act, 1872, misrepresentation Includes:

- A positive assertion in a manner not warranted by information of the person making it, of which that is not true but he believes it to be true.
- When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
- When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

As per Section 19 of Indian Contract Act, 1872, if consent of any party is obtained by using coercion, undue influence, misrepresentation, the agreement is voidable at the option of the aggrieved party.

The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

In given case, Q could not rescind the contract, as his acceptance to the offer of P to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale.

7. PERFORMANCE OF A CONTRACT

[RTP Dec. 2018]

75. Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872?

Answer:

Contracts which need not to be performed: A contract would not require performance under circumstances spelt out in Sections 62 to 67 of the Indian Contract Act, 1872. These circumstances are:

- a) Novation: Novation means substitution. Where a given contract is substituted by a new contract, it is novation. The old contract, on novation ceases. It need not be performed. Novation can take place with mutual consent. However, novation can take place by substitution of new contract between the same parties or between different parties. Novation results in discharge of old contract.
- b) Rescission: In case of rescission, the old contract is cancelled and no new contract comes in its place. A contract is also discharged by rescission. Sometimes, parties may enter into an agreement to rescind the previous contract. Sometimes, the contract is rescinded by implication or by non- performance for a long time without each other complaining about it.
- c) Alteration: Where the contract is altered, the original contract is rescinded. Hence, the old one need not be performed whereas the new one has to be performed. Alteration involves both rescission and novation. The line of difference between alteration and novation is very thin. While there can be very minor alterations, there cannot be unilateral material alteration to a contract. If it is done it will be void.
- d) Remission means waiver: Section 63 of the Act deals with remission. It provides that every promisee may dispense with or remit wholly or in part, the performance of the promise made to him or may extend the time for such performance or may accept instead of it any satisfaction which it thinks fit. Thus the promisee can waive either in full or in part the obligation of the promisor or extend the time for performance.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



[PP Dec. 2024]

[7 Marks]

76. Discuss the concept of impossibility of performance of contracts with suitable examples and reference to the related legal provisions.

Answer:

Impossibility of performance of Contracts

- 1) Physical impossibility: An agreement is void, if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.
- 2) Legal impossibility: An agreement is void, if it provides that something shall be done which as a matter of law cannot be done.

Examples:

- a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.
- b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of bargain, though neither party was aware of the fact. The agreement is void.
- c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Unilateral Mistake as to fact

As per section 22, a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A unilateral mistake is not allowed as a defence in avoiding a contract unless brought about by another party's fraud or misrepresentation.

[PP June 2013, Dec. 2019, MTP Dec. 2022 & MQP Dec. 2023] [7 Marks]

77. Discharge of contract.

Or

Discuss the different modes of terminating contractual relationship between the parties.

Or

Describe the Different Ways Under Which Contract May Be Discharged

Answer:

When the rights and obligations created by a contract come to an end, the contract is said to be discharged or terminated. In other words, discharge of contract means termination of contractual relationship between the parties.

Contract can be discharged by any of the following ways -

- **Discharge by performance:** Performance is the usual mode of discharge of a contract. Performance may be:

- **Actual performance:** Actual performance is the fulfilment of the obligations arising from a contract by the parties to it, in accordance with the terms of the contract.
- **Attempted performance:** Offer of performance is also known as attempted performance or tender of performance. A valid tender of performance is equivalent to performance.
- **Discharge by agreement:** The parties may agree to terminate the existence of the contract by any of the following ways:
 - **Novation:** Substitution of a new contract in place of the existing contract is known as "Novation of Contract". It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties.
Example: A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.
 - **Alteration:** Alteration means change in one or more of the terms of the contract. In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.
 - **Rescission:** Rescission means "cancellation". All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.
Example: A promises to deliver certain goods to B at a certain date. Before the date of performance A and B mutually agree that the contract need not be performed. The contract stands discharged by rescission.
 - **Remission:** Remission means acceptance of a lesser performance than what is actually due under the contract. There is no need of any consideration for remission.
Example: A has borrowed ₹ 500 from B. A agrees to accept 250 from B in satisfaction of the whole debt. The whole debt is discharged.
 - **Waiver:** Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged.
Example: A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.
- **Discharge by lapse of time:** Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law.
Example: If a creditor does not file a suit within three years of debt, the debt becomes time-barred. He is deprived of his legal remedy. Discharge by operation of law: A contract may be discharged by operation of law in the following cases:
 - **Death:** In contracts involving personal skill or ability, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass on to his legal representatives.
 - **Insolvency:** The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his adjudication.

QUESTION BANK

CA AKASH AGARWAL

ICA, 1872

- **Unauthorized material alteration:** Material alteration in the terms of the contract without the consent of the other party discharges the contract. Change in the amount of money to be paid, date of payment, place of payment etc. are examples of material alteration.
 - **Merger:** When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end.
Example: Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part time lectureship.
 - **Discharge by impossibility of performance:** Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things.
- **Discharge by breach:** Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract
Example: A and B wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.
- **Termination of Contract:** The proper way, in which the agreement could have been terminated by issuing of a notice to the plaintiff, calling upon to complete the transaction within a particular time, failing which the contract will be treated as cancelled.
Example: When the contract is for the sale of immovable property the vendor must give reasonable notice requiring the performance within a definite time.

[Note: Students may explain in short for 4 marks].

- b) When the parties to it agree to substitute a new contract for it or to rescind or alter it, (Section 62).
- c) When the promisee dispenses with or remits, wholly or in part, the performance of the promise made to him or accepts any satisfaction for it. (Section 63).
- d) When the person at whose option it is voidable, rescinds it. (Section 64)
- e) When the promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise. (Section 67).
- f) When it is illegal

79. Distinguish between 'Succession and Assignment

Answer:

Distinction between Succession and Assignment

Succession: When the benefits of a contract are succeeded to by a process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir. When a son succeeds to the estate of his deceased father, he is liable to pay the debts and liability of his father, however, to the extent of property inherited by him.

Assignment: In the matter of assignment however the benefit of a contract can only be assigned and not the liabilities thereunder. This is because when liability is assigned, a third party gets involved therein. Thus, a debtor cannot relieve himself of the liability to creditor by assigning to someone else his obligation to repay the debt (Zafar Mills v. Judge Nudge Jute Mills Ltd. (33 Cal)

EXTRA THEORY QUESTIONS

78. Who may perform a contract? Under what circumstances may a contract not be performed?

Explain

Answer:

By whom a Contract may be Performed:

1. **Performance of a Contract:** Performance of contract consists in doing or causing to be done, that which the promisor has promised shall be done. Performance of contract is the completion of legal obligation which arises out of the contract. Every party to the contract is obliged to perform the contract accordingly, unless it is discharged or exempted from the performance.
2. **Who may perform a contract:**
 - a) Promisor himself.
 - b) Agent.
 - c) Representatives
 - d) Third persons.
 - e) Joint promisor.
3. **When a contract need not be performed:**
 - a) When its performance becomes impossible. (Section 56).

80. When are the joint promisors liable under the Indian Contract Act?

Answer:

Liability of Joint Promisor & Promisee: Section 42 of the Indian Contract Act which deals with the joint performance of the promise, states that when two or more persons have made a joint-promise, then unless a contrary intention appears by the contract, all such persons during, their joint lives and after the death of anyone of them, his representative jointly with the survivor or survivors and after the death of the last survivor representatives of all jointly must fulfill the promise. But where the performance is not done voluntarily, the situation is resolved by Section 43 i.e.

- a) Each promisor may compel equal contribution by other joint promisor unless a contrary intention appears from the contract.
- b) If there is default in such contribution by one more joint promisors, the remaining promisors must bear the loss
- c) Where one of the joint promisors is made to perform the whole contract, he gets a right to call for a contribution from others.

However, this rule of contribution shall not apply as between the principal debtor and surety, although they are joint promisors as against the creditor.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



81. What is the law relating to the performance of joint promises in case of a contract?

Answer:

Performance of joint promises (Section 45): Section 45 says, "when a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the Contract, the right to claim performance rests as between him and them, with them during their joint lives, and after the death of any of them with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representative of all jointly.

For example, A in consideration of Rs. 5,000 lent by him of B & C promises B & C jointly repay them that sum with interest in a specified day, but B dies. In such case right to demand payment shall rest with B's legal representatives jointly with C during C's life time and after the death of C with representatives of B and C jointly. Hence B & C are joint promisees.

82. Explain the rules under the law of contract as regards to time and place for the performance of the promise

Answer:

Time and Place for the performance of the promise: Section 46 to 50 of the Indian Contract Act, 1872 are relevant regarding time and place for the performance of the promise which are as follows:

- (i) **if no time is specified**, the promise must be performed **within a reasonable time**. The expression 'reasonable' time is to be interpreted having regard to the facts and circumstances of a particular case (Section 46)
- (ii) If a promise is to be performed on a **specified date but the hour is not mentioned**, the promisor may perform it at **any time during the usual hours of business**, on such day. Moreover, the delivery must be made at the usual place of business (Section 47).
- (iii) Where **no place is fixed**, it is the duty of the **promisor to ask the promisee to fix a reasonable place** for the performance of the promise. In all cases the promisor must apply to the promisees; here no distinction is made between an obligation to pay money and obligation to deliver goods or discharge any other obligation (Section 49). The foregoing rules regarding the time and place for the performance of promise apply, only when the promisor undertakes to perform the promise without an application being made by the promisee.
- (iv) Where the promisor has not undertaken to perform the promise without an application by the promisee, and the promise is to be performed on a certain day it is the duty of the promisee to apply for **performance at a proper place and within the usual hours of business** (Section 48).
- (v) Generally, the performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

83. What do you mean by Performance of Reciprocal Promise?

Answer:

Performance of Reciprocal Promise: The law relating to reciprocal promise as set out in Sections 51 to 54 of the Act.

General observations

A contract may consist of (i) an act and a promise or (ii) two promises one being the consideration for the other. The second type of contract which involves two promises, one promise from each to the other party is known as "Reciprocal promise". This can be illustrated with the following: When A' sells 500 quintals of rice to 'B' and 'B' promises to pay the price on delivery, the contract would consist of two promises one by 'A' to 'B' and another by 'B' to 'A'. These promises are reciprocal promises. Here the promise of 'A' is the consideration for the promise of 'B' and vice versa.

The above is in contrast to another situation. In the above example if 'B' promises to pay the price after a month, the contract would have two parts one is the act of 'A' and the second one is promise of 'B'. This is not a reciprocal promise.

The performance of reciprocal promise can take different forms

1. They can be performed simultaneously or
2. They can be performed according to the order decided by parties or
3. They can be performed according to the order fixed by implication.

There is also a probability where one of the parties could be preventing the other from performing his part of the promise.

84. State the factors which make time of essence.

Answer:

Factors which make time of essence:

According to this section, "if the intention of the parties was that time should be the essence of the contract", then a failure to perform at the agreed time renders the contract voidable at the option of the opposite party. "Time is generally considered to be of the essence of the contract in the following three cases:

1. Where the **parties have expressly agreed** to treat it as of the essence of the contract;
2. Where **delay operates as an injury**
3. Where the **nature and necessity of the contract requires** it to be so construed, for example, where a party asks for extension of time for performance.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



85. What are the consequences of failure?

Answer:

Consequences of Failure:

1. Section 55 further declares that "if it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such things at or before the specified time".
2. It means that the innocent party will have to accept performance even if it is delayed.
3. He does not have the right to reject. But he may sue the other party for any loss caused by the delay.
4. Where, on the other hand, the time of performance is of the essence of the contract, any delay will render the contract voidable at the option of the other party. He may reject the performance and immediately sue for the breach.

86. State out the circumstances under which an agreement may be void, since it is impossible to carry it.

Answer:

Circumstances under which an agreement may be void, since it is impossible to carry it out

- Impossibility of performance [Section 56, Indian Contract Act, 1872]:

An agreement may be void since it is impossible to carry it out. A contract to do an act, which after the contract is made, becomes impossible, or, by reason or some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful under the following cases:

- a) Impossibility existing at the time of contract:
 - i. if known to the parties.
 - ii. if unknown to the parties.
 - iii. if known to the promisor only.
- b) Supervening impossibility (arising subsequent to the formation of a contract) like destruction of subject matters, nonexistence or non-occurrence of a particular state of things or incapacity to perform a contract of personal services or change of law, or outbreak of law or failure of the ultimate purpose.

87. What is "Supervening Impossibility"? What are its effects upon the contract?

Or

Explain the circumstances whereunder 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. Meaning and its effects upon the contract:

Meaning: An impossibility which makes the performance of a contract impossible or illegal, by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, is called Supervening Impossibility

Circumstances: It may arise on account of more than one reasons, which may be enumerated as below:

- a) Accidental destruction of the subject matter of the contract.
- b) Non-existence or non-occurrence of a particular state of things.
- c) Incapacity to perform a contract of personal services
- d) Change in law,
- e) Outbreak of war.

Effects: Supervening Impossibility makes the contract void and the parties are released out of their. They need not perform their obligations. They need not perform their part of the promises which have not accrued till the date of the impossibility

88. What are the rules relating to appropriation or payments made by a debtor who owes a number of distinct debts to his creditors?

Answer:

Rules relating to appropriation of payments made by a debtor who owes a number of distinct debts to his creditors: When a debtor owes several distinct debts to one person and makes a partial payment only, the question arises as to which debt should the payment be appropriated. Sections 59 to 61 of the Indian Contract Act lay down the following rules in this regard:

- a) Where debt to be discharged has been specified (Section 59).
- b) Where no particular debt is indicated (Section 60).
- c) Where neither party appropriates (Sec. 61).

Note: Appropriation towards interest: When the debtor makes a part payment without indicating the appropriation (whether towards principal or interest) in such cases, the payment must first be adjusted towards interest and the balance towards the principal amount.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



89. Explain the terms "Restoration of Benefit under a Voidable Contract".

Answer:

Restoration of Benefit under a Voidable Contract: Certain contracts referred to in Section 19, 19A, 39, 51, 54 & 55 are voidable. The question for consideration is what is the effect of recession of contract by that person at whose option the contract is voidable. The following are the effects of such an action

- (1) The other party need not perform the promise
- (2) Any benefit received by the person rescinding it must restore it to the person from whom it was received. A voidable contract which is voidable either at its inception or subsequently comes to an end when it is avoided by the party at whose option it is avoided. In such a case, not only the contract need not be performed there is also restoration of benefit.
 - a) the injured party on account of non-performance of the contract is entitled to recover compensation for damages suffered and
 - b) benefits received must be restored.

8. BREACH OF CONTRACT

[MTP Dec. 2022]

[8 Marks]

90. Discuss the remedies available to buyer against seller for breach of contract.

Answer:

A buyer also has certain remedies against the seller who commits a breach

These are as under:

- a) **Suit for Damages for Non-Delivery [Section 57]:** When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. .
- b) **Suit for price:** Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.
- c) **Suit for specific performance [Section 58]:** When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods.
- d) **Suit for Breach of Warranty [Section 59]:** Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may — (a) set up the breach of warranty in extinction or diminution of the price payable by him, or (b) sue the seller for damages for breach of warranty.
- e) **Repudiation of contract before the due date [Section 60]** Section 60 provides that where either party to a contract of sale repudiates the contract before the date of delivery and the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
- f) **Suit for interest:** The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



EXTRA THEORY QUESTIONS

91. Explain: What is meant by Anticipatory Breach of a contract?

Answer:

Meaning: An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in Frost vs. Knight and Hochster vs. De La Tour.

Anticipatory breach of a contract may take either of the following two way:

- Expressly by words spoken or written, and
- Impliedly by the conduct of one of the parties.

Effects of anticipatory breach: The promisee is excused from performance or from further performance Further he gets an option:

- to either treat the contract as rescinded and sue the other party for damages for breach of contract immediately without waiting until the due date of performance, or
- he may elect, not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on reconsideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

92. State and explain the different remedies available under the Indian Contract Act to an aggrieved party for a breach of contract.

Answer:

Different remedies available under the Indian Contract Act to an aggrieved party for a breach of contract: Following remedies are available to the aggrieved party in the event of breach of contract.

- Rescission of Contract:** The aggrieved party may set aside the contract and terminate all his liabilities.
- Specific Performance:** The aggrieved party can request the Court to order for specific performance of the contract under Specific Relief Act in those cases where damages cannot be measured or will not be an adequate remedy.
- Injunction:** In contracts of negative character, i. e. promises not to do something, if the promiser does it, the aggrieved party can obtain injunction from the Court forbidding the party from committing breach.
- Quantum Meruit:** The injured party in this case of breach of contract can claim reasonable compensation for what he has already done under the contract. He can claim compensation for the services rendered or goods supplied non- gratuitously if the benefit of the same has already been enjoyed by the other party.

e. Damages: The party injured by breach of contract can claim damages i. e. monetary compensation for the loss suffered.

93. State the rules for determining damages on the breach of contract.

Answer:

The rules relating to damages.

- Damages arising naturally:** Compensation is allowed for any proximate loss or damage which naturally, fairly and reasonably arises in the usual course of events. No compensation is allowed for any remote or indirect loss or damage.
- Special Damages:** Compensation can be claimed for any loss or damage which the parties knew when they entered into the contract, as likely to arise from the breach. Subsequent circumstances causing change in quantum of damages are ignored. Special damages can be claimed only on a previous notice. Loss of profit cannot be taken into account for estimating the damages without prior notice and agreement to that effect.
- Exemplary damages:** Exemplary damages are damages, awarded by the courts of such country to prevent the parties from committing certain offences. Such award of damages create an example for others and restrain them from committing these offences. Such damages are awarded in case of:
 - breach of promise to marry; and
 - wrongful dishonour of a cheque by a banker.

In a breach of promise to marry, exemplary damages may be awarded to the other party taking into consideration the injury caused to his or her feelings.

In case of dishonour of cheques (wrongfully) by a banker, the amount of damages may be quite heavy, depending upon the loss of credit and reputation suffered on that account. A business man whose credit has suffered will get exemplary damage even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages.

- Nominal damages:** where the injured party has not in fact suffered any loss by reasons of the breach of a contract, the damages recoverable by him are nominal.

These damages merely acknowledge that the plaintiff has proved his case and won.

Notes:

- Damages can be claimed from carriers even without notice for deterioration caused to goods by delay in transit. (Wilson v. Lancashire & Yorkshire Rly. Co).
- Damages by way of penalty are not allowed except in the case of bail bond or in public interest or for the performance of public duty by order of the Court or Government.

QUESTION BANK

CA AKASH AGARWAL

ICA, 1872

94. Write short notes on Liquidated damages.

Answer:

Liquidated damages: Sometimes the parties to a contract, at the time of making the contract agree to the amount of compensation payable in the event of the breach of the contract. The amount of compensation payable, which has been agreed may be either liquidated damages or penalty. A liquidated damage is a fair and genuine covenanted pre-estimate of probable damage for an anticipated breach of contract. If it appears at the time of entering into a contract, the amount of damage likely to follow from a breach was uncertain and the parties, to avoid uncertainty and the expense of proving damages in a court, agreed at the particular amount, that sum would be described as liquidated damages.

Liquidated damages differ from penalty and the difference is maintained in English Law but in India the courts do not observe such distinction and it is left to the courts to decide. This will be evident from Section 74 of the Indian Contract Act, 1872.

95. Distinguish between Liquidated damages' and Penalty

Answer:

Distinction between 'Liquidation damages and Penalty': Liquidated damages and penalty are applicable to determine the extent of damages, in case of breach of contract both in England and in India. Still there exist some differences between these two which are as follows:

1. Liquidated damages are the amount assessed on the basis of actual or probable loss by both the parties payable till the event of breach. While in case of penalty it is not based on actual or probable loss. Penalty is provided to prevent a party from committing a breach.
2. Liquidated damage is imposed by way of compensation but penalty is imposed by way of punishment.
3. Courts in England usually allow 'liquidated damages' without any regard to the actual loss sustained and treat 'Penalty' clause as invalid. But under the Indian law, Section 74 of the Contract Act does not recognise any difference between liquidated damages' and 'penalty, the courts are required to allow reasonable compensation so as to cover the actual loss sustained, not exceeding the amount so mentioned in the contract.

96. Explain "Damages are compensatory and not Penal".

Answer:

Measurement of Damages: In cases where there is a breach of contract, the promisor who breaches is liable to pay compensation for damages suffered by the promisee. The compensation can be classified as

- (i) those for damages that usually arise in the event of breach of contract and
- (ii) those for damages which parties know and anticipated at the time of entering into the contract called special damages. This kind of special damages can be claimed only on previous notice.

However no compensation is payable for any remote or any indirect loss. While assessing the damage the inconvenience caused to the aggrieved party on account of non-performance should be assessed carefully, as the party entitled for compensation, he has a duty to take steps to minimise the loss.

- a. Damages for Breach of Contract: By virtue of Section 73 of the Indian Contract Act on the breach of a contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by the breach.
- b. Damages are compensatory and not Penal: Damages (ordinary or special) are given by way of compensation for loss suffered and not by way of punishment for wrong inflicted. The fundamental basis of awarding damages is compensation for pecuniary loss which naturally flows from the breach of contract the object is to put the injured party in the same position, so far as money can do it, as if he had not been injured.
Hence, vindictive or exemplary damages have no place in the law of contract because they are punitive by nature. But in case of breach of a promise to marry and dishonour of a cheque by a banker wrongfully even when sufficient funds are there to the credit of customers account, the court may award exemplary damages.

97. Briefly Answer: When a claim for Quantum Meruit arises?

Answer:

Quantum Meruit: The phrase 'quantum meruit' literally means "as much as is earned" or according to the quantity of work done". When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where the further performance of the contract becomes impossible. The claim on quantum meruit must be brought by a party who is not in default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible. Following are the cases in which a claim on quantum meruit may arise:

1. Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



CASE STUDIES

[MTP Dec. 2018]

[6 Marks]

- recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party. [Section 65].
- Where, a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit (Section 70).
 - The compensation for the work done may be recovered on the basis of quantum meruit. Where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part, in such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.

98. Explain the meaning of 'Suit for Injunction' as per the provisions of the Indian Contract Act, 1872

Answer:

Suit For Injunction-As per the Indian Contract Act, 1872, a suit for injunction is a remedy provided to the aggrieved party on the breach of contract. The term injunction may be defined as an order of the courts restraining a person from doing something which he promised not to do. In general, injunction is a court order by which an individual is required to perform, or is restrained from performing, a particular act. In relation to the law of contract, the injunction is a useful weapon for the purpose of encouraging performance of a contract involving personal services.

When a party makes a breach of contract, the injured party can, under certain circumstances, apply to the Court for issuing of an injunction with a view to prohibiting the party for making breach of the contract or doing something against the term of contract.

The power of Court to grant injunction is discretionary. However the Courts generally grant injunctions in the following cases:

- In case of clear negative stipulation: Sometimes there is clear negative stipulation in the contract that a party will not do a particular thing. In such cases, if that party undertakes to do the same thing and makes a breach of contract, the Court may grant an injunction on the request of the aggrieved party.
- In case of inferred negative stipulation: Where in the contract there is no clear negative stipulation but it can be inferred from it that there existed a negative stipulation, the court may also grant an injunction. But the courts generally go by the distinct negative stipulation.

99. Arun, Barun and Gautam jointly borrowed 500,000 from Prashant. The whole amount was repaid to Prashant by Barun. Decide in the light of the Indian Contract Act, 1872 whether:
- Barun can recover the contribution from Arun and Gautam,
 - Legal representatives of Arun are liable in case of death of Arun,
 - Barun can recover the contribution from the assets, in case Gautam 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 anyone 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 promisor 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,

- Barun can recover the contribution from Arun and Gautam because Arun, Barun, Gautam are joint promisors.
- Legal representative of Arun is liable to pay the contribution to Barun. However, a legal representative is liable only to the extent of property of the deceased received by him.
- Barun also can recover the contribution from Gautam's assets.

[MTP Dec. 2018]

[6 Marks]

100. Mr. B (a broker) by the order of Mr. A purchases 10 Drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues. Mr. B defends but failed. Mr. B has to pay cost, damages and incurs expense. Can B recover any amount from A?

Answer:

In this case 'A' is liable to 'B' for such damages, costs and expenses because the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the Authorities conferred upon him. B acted on the instruction of 'A'. Hence A should indemnify B for such damages, costs and expenses

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



[MTP Dec. 2023]

[7 Marks]

101. Miss Chitra, a singer, enters into a contract with the manager of Bangalore Gate Club, to sing in the Club for two concerts every week during the next two months and the club agrees to pay her at the rate ₹ 15000 for each concert. On the seventh concert Miss Chitra wilfully absents herself. With the assent of the manager of the club, Miss Chitra sings for eighth concert. But on the following day, the club, puts an end to contract. Can Miss. Chitra claim damages for breach of contract? Advise

Answer:

On the seventh Concert when Miss Chitra wilfully absents herself, the club is at liberty to put an end to the contract, if Miss. Chitra sings on the eighth Concert with the consent of the club. The club is entitled to compensation for the damage sustained because of Miss. Chitra's failure to sing on the seventh concert. If the club puts an end to the contract, Miss Chitra can claim damages for breach of contract [sec. 39 of the The Indian Contract Act, 1872].

[PP June 2017, RTP June 2018]

[7 Marks]

102. P Ltd., contracts with SK Traders to make and deliver certain machinery to them by 30.04.2017 for 11.50 lakhs. Due to labour strike, P Ltd. could not manufacture and deliver the machinery to SK Traders. Later, SK Traders procured the machinery from another manufacturer for 12.75 lakhs. SK Traders was also prevented from performing a contract which it had made with MK Traders at the time of their contract with P Ltd. and were compelled to pay compensation for breach of contract. Advise SK Traders the amount of compensation which it can claim from P Ltd. referring to the legal provisions of the Indian Contract Act, 1872?

Or

Kwality Ltd., contracts with Walls Traders to make and deliver certain machinery to them by 30.6.2014 for 11.50 lakhs. Due to labour strike, Kwality Ltd. could not manufacture and deliver the machinery to Walls Traders. Later, Walls Traders procured the machinery from another manufacturer for 12.75 lakhs. Walls Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with Kwality Ltd. And were compelled to pay compensation for breach of contract. Advise Walls Traders the amount of compensation which it can claim from Kwality Ltd., referring to the legal provisions of the Indian Contract Act.

Answer:

As per Section 73 of the Indian Contract Act, 1872, when there is a breach in a contract, then 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 in the Explanation to the section 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 given case, P Ltd, is obliged to compensate for the loss of 1.25 lakhs (12.75- 11.50 1.25) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which SK Traders were compelled to make to MK Traders, it depends upon the fact whether P Ltd. knew about the contract of SK Traders for supply of the contracted machinery to MK Traders on the specified date.

If so, P Ltd. is also obliged to reimburse the compensation which SK Traders had to pay to MK Traders for breach of contract. Otherwise P Ltd. is not liable.

QUESTION BANK

CA AKASH AGARWAL

ICA, 1872

9. CONTINGENT & QUASI CONTRACTS

[PP Dec 2018, July 2023 & MTP Dec 2022]

[10 Marks]

103. Quasi contract,

Or

Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi-contracts by the Indian Contract Act, 1872.

Or

State the circumstances which are identified as quasi contracts by Indian Contract Act, 1872.

Answer:

➤ There are certain contracts where there is no contract or agreement between the parties, but they are put in the same position as if there were a contract between them. A quasi-contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another. The Court recognizes them as contracts. Law of quasi-contract is also known as the law of restitution. The rights available are not against the whole world but against a particular person or persons only, so in this respect it resembles to a contractual right.

Circumstances identified as quasi-contracts:

- Claim for necessities supplied to persons incapable of contracting Section 68: Any person supplying necessities of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessities, reimbursement can be claimed.
- Right to recover money paid for another person Section 69: A person, who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.
- Obligation of person enjoying benefits of non-gratuitous act Section 70: Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
- Responsibility of finder of goods Section 71: A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.
- Liability for money paid or thing delivered by mistake or by coercion Section 72: A person, to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. In all the above cases contractual liability arises without any agreement between the parties.

[PP. Dec.2016, MTP Dec. 2019 & Dec. 2022]

[4 Marks]

104. What are the rights of a finder of goods under the Indian Contract Act, 1872?

Answer:

As per Section 168 of Indian Contract Act, 1872, the finder of goods has following rights:

- a) Right to sue the owner: The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward.
 - b) Right of lien: He can retain the goods against the owner until he receives compensation for trouble and expenses voluntarily incurred by him to preserve the goods and finding out the owner until he receives such compensation.
- As per Section 169 of Indian Contract Act, 1872, the finder of goods has following right-
- c) Right of resale: He can sell & give good title in the following cases:
 - Where the goods found is in danger of perishing.
 - Where the owner cannot, with reasonable diligence, be found out
 - Where the owner is found out, but he refuses to pay the lawful charges of the finder, and
 - Where the lawful charges of the finder, in respect of the goods found, amount to 2/3rd of its value.

[PP. Dec.2017, MTP June. 2019]

[5 Marks]

105. Short note on Contingent Contract.

Answer:

Contingent contract

As per Section 31 of Indian Contract Act, 1872, a contract to do or not to do something, if some event, collateral to such contract, does or does not happen is called contingent contract.

The following are the essential of contingent contract:

- Uncertainty and futurity of the event to which it is related.
- Uncertain future event must be collateral to the contract.
- A contingent contract need not necessarily be independent on any external event. It may be conditional on the voluntary act or the future conduct of one of the parties or a third person.

As per Section 32 of Indian Contract Act, 1872, contingent contract to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Eg: A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced in law until & unless C dies in A's lifetime.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



[PP. June 2024 & MQP Dec 2024]

[7 Marks]

106. Explain the enforcement of contingent contract with examples.

Answer:

Section 32 provides that contingent contracts to do or not to do anything, if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Example: A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced in law unless and until C dies in A's lifetime.

Section 33 provides for enforcement of contracts contingent on an event not happening. This section provides that contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Example: A agrees to pay B a sum of money, if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

Section 34 discusses about deemed impossible contract. The said section provides that if the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Example: A agrees to pay B a sum of money if B marries C, C marries D. The marriage of B to C must now be considered impossible; although it is possible that D may die and that C may afterwards marry B.

Section 35 provides for the contracts which are contingent on happening of specified event within fixed time. The contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Example: A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year and becomes void if the ship is burnt within the year.

Contingent contracts to or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happened, or before the fixed has expired, if it becomes certain that such event shall not happen.

Example: A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Section 36 provides that contingent agreement impossibility of do anything, if an Sectionble event happens, are void, what the time when it is made event is known or not to the parties to the agreement at Example: A agrees to pay B ₹ 1,000 if two straight lines should enclose a space

[PP. Dec 2023]

[7 Marks]

107. Discuss different types of quasi contract.

Answer:

Quasi contracts are so called because the obligations associated with such transactions could neither be referred as tortious nor contractual but still recognized by law as enforceable like other contracts.

A quasi contract is a fictitious contract created under legal obligations, similar to a valid contract. These contracts are also known as implied-in-law contracts. What makes this different is that the parties involved do not intend to create a contract. A quasi contract is created by the Court. For the same reason, there is no actual offer or acceptance or an agreement between the parties.

Types of Quasi Contracts:

Sections 68 to 72 of The Indian Contract Act, 1872 deals with five kinds of quasi contracts. These are as under:

- Section 68 - Claim for necessities supplied to person incapable of contracting, or on his account - This section provides that if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessities 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;
- Section 69 - Reimbursement of person paying money due by another in payment of which he is interested- This section provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
- Section 70 - Obligation of person enjoying benefit of non-gratuitous act - This section provides that where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the later is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered - it is otherwise called as quantum meruit;
- Section 71 - Responsibility of finder of goods - This section provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee;
- Section 72 - Liability of person to whom money is paid or thing delivered by mistake or under coercion - This section provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



[MTP Dec. 2019 & MQP Dec 2022]

[7 Marks]

108. What are the rights of the finder of goods?

Answer:

Right of finder of goods

Section 168 provides that the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Section 169 provides that when a thing which is commonly the subject of sale is lost, if the owner cannot, with reasonable diligence, be found or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it-

- when the thing is in danger of perishing by or of losing the greater part of its value; or
- when the lawful charges of the finder, in respect of the thing found, amount to two thirds of its value.

In *MJR Steels (P) Limited V. Chrisomar Corporation*—AIR 2007 (NOC) 234 (Cal.) it was held that it is not always necessary that sale should be by owner himself; sale by agent or anyone with the consent of owner is valid. Finder of asset can also sale and give good title. There can also sale by estoppels.

CASE STUDIES

[RTP. Dec 2018]

109. Mr. Ahmed agrees to pay Mr. Doshi a sum of money if Mr. Doshi marries Ms. Priya. Ms. Priya however marries Mr. Farroque, who died subsequently. After the death of Mr. Farroque, Ms. Priya marries Mr. Doshi. Whether Mr. Ahmed is legally bound to pay the agreed sum of money to Mr. Doshi? Comment.

Answer:

If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies (Sec. 34).

In the instant case, future event on which the contract is contingent in the future conduct of a living person. Therefore the marriage of Mr. Doshi with Ms. Priya must be considered impossible at the time Ms. Priya marries Mr. Farroque. Although it is possible that Mr. Farroque dies and Ms. Priya afterwards marries Mr. Doshi. Therefore at that point of time of Ms. Priya's marriage with Mr.

Farroque, the contract becomes void on the ground of impossibility of the future event taking place. In view of this Mr. Ahmed is not legally bound to pay the agreed sum to Mr. Doshi.

[PP. Dec 2015 & RTP. June 2018]

110. Y holds agricultural land in Assam on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid?

Or

Sanjay holds agricultural land in Bihar on a lease granted by Palash, the owner. The land revenue payable by Palash to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Sanjay's lease. Sanjay, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from Palash. Referring to the provisions of the Indian Contract Act, 1872 decide whether Palash is liable to make good to Sanjay, the amount so paid?

Answer.

As per Section 69 of Indian Contract Act, 1872, if:

Any person makes a payment in which he is interested, But not legally bound, Then the other person will have to reimburse him the money.

In given case, Y in order to save his lease (his interest), makes payment of revenue to the Government in place of X which makes him eligible to get reimbursed by X Thus, X is liable to make good to Y, the amount so paid.

[PP. Dec. 2016 & June 2019]

[6 Marks]

111. A, aged 16 years, was studying in an engineering college. On 1 June, 2015 he took a loan of 2 Lakhs from B for the payment of his college fee and agreed to pay by 31st July 2016. A possesses assets worth ₹220 Lakhs. On due date, A fails to pay back the loan to B. B now wants to recover the loan from A out of his assets. Whether B would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

Or

Sunil, aged 16 years, was studying in a Medical College. On 1st March, 2017 he took a loan of 3 lakhs from Anil for the payment of his college fee and agreed to pay by 31st May, 2018. Sunil possesses assets worth 15 lakhs. On due date, Sunil fails to pay the loan back to Anil.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



Anil now wants to recover the loan from Sunil out of his assets. Whether Anil would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

Answer:

As per Section 11 of Indian Contract Act, 1872, the parties to an agreement must be capable of entering into a contract.

An agreement with a minor is void-ab-initio.

As per Section 68 of Indian Contract Act, 1872, if necessities (goods suitable to the condition of the living of such person and not luxuries) are supplied to a person, who is incompetent to contract, the supplier is entitled to claim the reimbursement from the estate of such person. A supplier would also be entitled to recover the price of necessities supplied to wives or minor child of the incompetent person, as he is legally bound to support them.

In given case, B gave loan for fees payment to A, a minor. Education is a necessity.

So, it can be said the loan was given for A's necessity not luxury. But, A shall not be personally liable to repay the loan. His estate can be made liable for same.

So, B would succeed in recovering the loan.

[MTP Dec 2017]

[6 Marks]

112. Z rents out his house situated at Delhi to W for a rent of 10,000 per month. A sum of 5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the Corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z

Answer:

W is entitled to recover from Z the amount paid to the Municipal Corporation:

- Since there is a contract between W and Z, viz., quasi contract;
- Since Z is bound to make the payment of house tax to the Municipal Corporation;
- Since W is interested in such payment;
- Since W is not himself liable for such payment.

[RTP June 2018]

113. Sidhartha contracts with Piyu for a fixed price to construct a house for Piyu within a stipulated time. Piyu would supply the necessary materials to be used in the construction. Ajay guarantees Sidhartha's performance for the contract. Piyu does not supply the materials. Would Ajay be still liable?

Answer:

Ajay is discharged from the liability since the surety is discharged by any act or omission of the creditor, the legal consequences of which is the discharge of the principal debtor [sec 134].

In the given case, failure to supply necessary materials by Piyu (the creditor) amounts to an omission on the part of the creditor resulting in the discharge of Sidhartha (the principal debtor) and hence discharging Ajay (the surety).

[RTP June 2018]

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In the given case, failure to supply necessary materials by Piyu (the creditor) amounts to an omission on the part of the creditor resulting in the discharge of Sidhartha (the principal debtor) and hence discharging Ajay (the surety).

[MQP Dec 2023]

115. 'A' contracts with 'B' for a fixed price to construct a house for 'B' with stipulated time. 'B' would supply the necessary material to be used in the construction. 'C' guarantees A's performance of the contract. 'B' does not supply the material as per the agreement. Is 'C' discharged from his liability?

Answer:

- In this case C is surety for A's performance. Performance of A depends on the supply of material by B. B does not supply the required material which makes A unable to perform his part of contract.
- According to Section 134 of the Indian Contract Act, 1872 the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released

QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

- In the given case, B omits to supply the necessary material.
- Hence, C is discharged from his liability.

10. INDEMNITY & GUARANTEE

[PP. Dec 2023 & MTP June 2019]

[7 Marks]

116. Differences between Contract of Indemnity and Contract of guarantee.

Answer:

No	Contract of Indemnity	Contract of guarantee
1	In this contract there are <u>two parties</u> – (1) the indemnifier and (2) the indemnified	In this contract <u>three parties</u> are involved – (1) principal debtors, (2) surety and (3) creditors
2	The <u>primary liability</u> is on the <u>indemnifier</u>	The <u>principal liability</u> is on the <u>principal debtors</u> . <u>Secondary liability</u> is on the <u>surety</u>
3	The <u>indemnifier is not acting at the request of the debtor</u> .	The <u>surety gives contract at the request of the principal debtors</u>
4	The <u>possibility of any loss happening</u> is the only contingency against which the indemnifier undertakes to indemnify.	<u>There is an existing debt</u> for which the surety gives guarantee to the creditor on behalf of the principal debtor.
5	The <u>indemnifier cannot sue the third party in his own</u> unless there is an assignment.	The <u>surety is entitled to proceed against the principal debtor</u> when he is obliged to perform the guarantee.
6	The contract is between the <u>indemnifier and indemnified</u> .	The contract is between the <u>principal debtor-creditor; surety-creditor; principal debtor-surety</u> .
7	Defined under <u>section 124</u> of the Indian Contract Act, 1872	Defined under <u>section 126</u> of the Indian Contract Act, 1872

[RTP. Dec. 2018]

117. Write short note on: Invalid guarantee

Answer:

When guarantee is obtained by wrongful means it can be termed as invalid guarantee. The following are considered as invalid guarantee

- Guarantee obtained by misrepresentation - As per section 142 of Indian Contract Act, 1872, any guarantee which has been obtained by means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction is invalid.

Example: A engages B as clerk to collect money for him on C's reference. C knows about B's malpractices but still does not tell A. B fails to account for some of his receipts and A in

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



consequence calls upon him to furnish security for his duly accounting. Here, guarantee given by C is invalid as he hid material fact related B.

- Guarantee obtained by concealment - As per section 143 of Indian Contract Act, 1872, any guarantee with has been obtained by the creditor by means of keeping silence as to material circumstances is invalid.

[PP Dec. 2024]

[7 Marks]

118. Discuss the contract at indemnity at the right of indemnity holder when it sued.

Answer:

Section 124 of the Act defines the expression 'contract of indemnity' as a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

Example: A contracts to indemnify B against the consequences of the proceedings which C may take against B in respect of a certain sum of ₹2 lakhs. This is a contract of indemnity. This contract includes indemnifier and indemnity holder. A person who promises to indemnify from losses is called as indemnifier and the person whose loss is made good is called as indemnity holder. To indemnify does not merely means to reimburse in respect of moneys paid, but to save from loss in respect of the liability for which the indemnity has been given.

Rights of indemnity holder when sued: -

Section 125 provides the rights of indemnity holder when sued. This section provides that the promise, in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

- all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
- all the sums which he was not contrary to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit. This section is not exhaustive and does not set out all the reliefs which an indemnity holder who has been sued may get. It leaves untouched certain equitable reliefs which he may get. The rights of the indemnity holder are not confined to those mentioned in this section. Even before damage is incurred, it is open to him to sue for the specific performance of the contract of indemnity, provided that it is show, that an absolute liability has been incurred by him and that the contract of indemnity covers the said liability. In 'Pepin V. Chandra Seekur', ILR 5 Cal. 811 it was held that in the case of contract of indemnity, the liability of the party indemnified to a third person is not only contemplated at the time of

indemnity, but is the very moving cause of that contract and in case of such a nature, the costs reasonably incurred in resisting or reducing or ascertaining the claim may be recovered.

[PP. Dec 2024 MIP Dec. 2017 & MQP Dec. 2023]

[7 Marks]

119. How can a surety be discharged from his liability?

Or

Examine the circumstances under which a surety in a contract of guarantee stands discharged from the liability, by the conduct of the creditor and also by invalidation of contract.

Or

Discuss the circumstances under which the liability of the surety is considered to be discharged and the liability of the surety is not considered to be discharged.

Answer

A. By revocation which may be by way of -

- Giving notice (Section 130): A specific guarantee cannot be revoked by the surety if the liability has already accrued. But continuing guarantee can be revoked by notice as to future transactions.
- Death of surety (Section 131): Surety stands discharged for future transactions unless is contrary is not there in the contract. But deceased surety's estate cannot be liable for any transactions between the creditors and principal debtors after the death of the surety even if the creditor has no notice thereof.
- Novation i.e. substitution of with a new contract for an old one.

B. By conduct of creditor -

- By Variance in terms of contract (Section 133)
Any variance, made without surety's consent, in the terms of the contract between the principal (debtor) and the creditor, discharges the surety as to transactions subsequent to the variance.
- By release or discharge of principal debtor (Section 134)
The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.
- When creditor compounds with, gives time to, or agrees not to sue, principal debtor (Section 135)
A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.
- Discharge of Surety by Creditor's Act or Omission Imparting Surety's Eventual Remedy (Section 139)
If the creditor does any act which is inconsistent with the rights of the surety, or omits to do

QUESTION BANK

CA AKASH AGARWAL

ICA, 1872

- any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.
- C. By invalidation of contract:
- Guarantee Obtained by Misrepresentation Invalid (Section 142) — Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid and thus discharge the surety to that extent.
 - Guarantee Obtained by Concealment Invalid (Section 143) — Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid and thus discharge the surety to that extent.
 - Guarantee on Contract that Creditor shall not Act on it until Co-Surety joins (Section 144) — Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.
 - If there is failure of consideration between creditor and principal debtor.

CASE STUDIES

[RTP Dec. 2018]

120. Mr. Sudarshan, is employed as a cashier on a monthly salary of ₹10,000 by fruit bank for a period of three years. Rajeev gave surety for Sudarshan's good conduct. After nine months, the financial position of the bank deteriorates. Then Sudarshan agrees to accept a lower salary of ₹5,000 per month from Bank. Two months later, it was found that Sudarshan has misappropriated cash since the time of his appointment. What is the liability of Rajeev? Decide your answer in reference to the provisions of the Contract Act, 1872?

Answer:

According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance. Thus, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change. In the instant case Rajeev is liable as a surety for the loss suffered by the bank due to misappropriation of cash by Sudarshan during the first nine months but not for misappropriations committed after the reduction in salary.

121. Sudhir has given his residential property on rent amounting to ₹23,000 per month to Subhas. Amar became the surety for payment of rent by Subhas. Subsequently, without Amar's consent, Subhas agreed to pay higher rent to Sudhir. After a few months of this, Subhas defaulted in paying the rent.

- (i) Explain the meaning of contract of guarantee according to the provisions of the Indian Contract Act, 1872.
- (ii) State the position of Amar in this regard.

Answer:

(i) Section 126- Contract of guarantee

A 'contract of guarantee' is a contract:

- to perform the promise or
- to discharge the liability of a third person (Principal Debtor) in case of his default.

There are 3 Parties in a contract of guarantee

- (i) "Surety is the person who gives the guarantee
- (ii) Principal Debtor is the person in respect of whose default the guarantee is given.
- (iii) Creditor is the person to whom the guarantee is given.

(ii) Section 133- Discharge of surety by variance in terms of contract

Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Conclusion

In the instant case, Sudhir (Creditor) cannot sue Amar (Surety), because Amar is discharged from liability when, without his consent, Subhas (Principal debtor) has changed the terms of his contract with Sudhir (creditor). It is immaterial whether the variation is beneficial to the surety or does not materially affect the position of the surety.

122. Sec 127- Essential Features of Guarantee

Pratik (minor) purchased a smart phone on credit from a mobile dealer on the surety given by Mr. Kavi, (a major). Pratik did not pay for the mobile. The mobile dealer demanded the payment from Mr. Kavi because the contract entered with Pratik (minor) is void. Mr. Kavi argued that he is not liable to pay the amount since Pratik (Principal Debtor) is not liable. Whether the argument is correct under the Indian Contract Act, 1872? What will be your answer if Kavi and Paul both are minor?

Answer:

Section 127-Essential Features of Guarantee

In the case of a contract of guarantee:

- (1) Principal Debtor may or may not be competent (minor),
- (2) But Surety must be competent,
- (3) And the creditor must be competent.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

Conclusion

In the given question, the contract is a valid contract and Kavi (major) shall be liable to pay the amount even if Pratik (Principal debtor) is not liable (as Pratik is minor).

If both Kavi and Pratik are minors then the agreement of guarantee is void because the surety as well as the principal debtor are incompetent to contract

123. Mayur guarantees for Ranveer, a retail textile merchant, for an amount of Rs 1,00,000, for which is supplier may from time to time supply goods on credit basis to Ranveer during the next 3 months. After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for 40,000. Referring the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your paying answer in case Ranveer makes default in paying back Varma for the goods already supplied on credit i.e. Rs. 40,000?

Or

Nilesh and Ajay were engaged in business having same nature. 'Nilesh' stands surety for 'a Ajay' for any amount which 'Tushar' may lend to 'Ajay' from time to time during the next 6 months subject to a maximum of Rs. 85000. 3 months later, 'Nilesh' revokes the guarantee, when 'Tushar' had lent to Ajay Rs. 35000. Decide whether 'Nilesh' is discharged from all the liabilities to 'Tushar' for any subsequent loan under the provisions of the Indian Contract Act, 1872. Would your answer differ in case 'Suresh' makes a default in paying back to 'Tushar' the money already borrowed i.e. Rs. 35000?

Answer

Section 130- Revocation of continuing guarantee

Continuing Guarantee may be revoked, at anytime, by the surety by giving a notice to the creditor. However, revocation shall be effective only in respect of future transactions (i.e., the liability of the surety with regard to previous transactions remains unaffected).

Note: Revocation is always with respect to the Future Transactions and not past transactions.

Conclusion

As per the above provisions, liability of Mayur is discharged with relation to all subsequent credit supplies made by Varma after revocation of guarantee, because it is a case of continuing guarantee. However, liability of Manoj for previous transactions (before revocation) i.e. for Rs. 40,000 remains. He liable for payment of Rs. 40,000 to Sharma because the transaction was already entered into before revocation of guarantee

124. Sec 133: Discharge of surety by variance in terms of contract.

'Anil' gives to 'Manish' a continuing guarantee to the extent of 8,000 for the fruits to be supplied by 'Manish' to 'Sagar' from time to time on credit. Afterwards Sagar became embarrassed and without the knowledge of 'Anil', 'Manish' and 'Sagar' contract that Manoj shall continue to supply 'Sagar' with fruits for post-dated cheques and that payments shall be applied to the then existing debts between 'Ankush' and 'Manish'. Examining the provision of the Indian contract Act, 1872, decide whether 'Anil' is liable on his guarantee given to 'Manish'.

Answer

Section 133-Discharge of surety by variance in terms of contract

Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Conclusion

In the given problem, 'Manish' and 'Ankush' entered into arrangement by entering into a new contract without knowledge of the Surety 'Anil'. Since the variance made in the contract is without the surety's consent in the existing contract, as per the provision, 'Anil' is not liable on his guarantee for the fruits supplied after this new arrangement.

The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there and he is not liable on the altered contract because it is different from the contract made by him.

125. Sec 133: Discharge of surety by variance in terms of contract. Mr. V agreed to give a loan to Mr. W on the security of four properties. Mr. A gave guarantee against the loan. Actually Mr. V gave a loan of smaller amount on the security of three properties. Whether Mr. S is liable as surety in case Mr. W failed to repay the loan?

Answer

Section 133-Discharge of surety by variance in terms of contract

Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Conclusion

In the given instance, the actual transaction was not in terms of the guarantee given by Mr. S. The loan amount as well as the securities were reduced without the knowledge of the surety. So, accordingly, Mr. S is not liable as a surety in case W failed to repay the loan.

QUESTION BANK



CA AKASH AGARWAL

ICA 1872



126. Mr. Santosh was appointed as Site Manager of AAC Advertisement Company on a 2 years' contract at a monthly salary of 50,000. Mr. Vijay gave a surety in respect of Mr. Santosh's conduct. After six months the company was not in position to pay 50,000 to Mr. Santosh because of financial constraints. Chetan agreed for a lower salary of Rs. 30,000 from the company. This was not communicated to Mr. Vijay. Three months afterwards it was discovered that Santosh had been doing fraud since the time of his appointment. What is the liability of Mr. Vijay during the whole duration of Santosh's Appointment.

Answer:

Section 133-Discharge of surety by variance in terms of contract

Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Variation which is not substantial or not material or which is beneficial to the surety will not discharge him of his liability.

In *M.S Arun v RBI's Bank Ltd.* AIR 1963 SC 746, the surety guaranteed the repayment or loan provided by the bank to the principal debtor of only up to 25,000. Subsequently, since the bank was willing to provide loan only up to 20,000, the principal debtor reduced the amount to Rs. 20,000 in the guarantee form and without intimation to the surety gave it to the bank which was then accepted. On default by the principal debtor, the court held that the surety's liability was not discharged as the alteration was beneficial to him and not substantial.

Note:

Reduction in salary is not beneficial for surety.

This is not a Guarantee Contract for loan repayment. This is a Guarantee Contract for Performance and conduct of the party.

Surety liability is towards any misconduct. Surety is not liable for the payment of Salary. So, Reduction in salary is not beneficial for surety.

Conclusion

In the instant case, Mr. Vijay is liable as a surety for the loss suffered by ABC Constructions company due committed to misappropriation of cash by Mr. Santosh during the first 6 months but not for misappropriations after the reduction in salary.

Hence, Mr. Vijay, will be liable as a surety for the act of Mr. Santosh before the change in the terms of the contract i.e., during the first 6 months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Vijay, will discharge Mr. Vijay from all the liabilities towards the act of the Mr. Santosh after such variation

127. -Sec 133: Discharge of surety by variance in terms of contract. Y advances X a loan of T10,000 on the guarantee of X, at an interest of 10%. Subsequently, as Z was having some financial problems, Y reduced the rate of interest to 7% and also extended time for repayment of loan without the consent of S. X becomes insolvent. Can U sue S for recovery of amount?

Answer:

Section 133-Discharge of surety by variance in terms of contract

Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Variation which is not substantial or not material or which is beneficial to the surety will not discharge him of his liability.

In *M.S Arun v BOB's Bank Ltd.* AIR 1963 SC 746, the surety guaranteed the repayment or loan provided by the bank to the principal debtor of only up to 25,000. Subsequently, since the bank was willing to provide loan only up to R 20,000, the principal debtor reduced the amount to Rs. 20,000 in the guarantee form and without intimation to the surety gave it to the bank which was then accepted. On default by the principal debtor, the court held that the surety's liability was not discharged as the alteration was beneficial to him and not substantial.

Note: Reduction in interest rate is not beneficial for surety. His primary liability is the Principal Amount. Interest is secondary. Reduction in interest rate shows financial weakness. If Principal is reduced, then it is beneficial for Surety.

Conclusion

Accordingly, U cannot sue S, because a surety (S) is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor (Z).

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



128. Sec 134: Discharge of surety by release or discharge of principal debtor; Sec 136: Agreement made with third person to give time to PD

Explaining the provisions of the Indian Contract Act, 1872, answer the following:

- (i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?
- (ii) C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

Answer:

Section 134- Discharge of surety by release or discharge of principal debtor

The surety is discharged if the creditor:

- (1) enters into a fresh/ new contract with principal debtor; by which the principal debtor is released, or
- (2) does any act or omission, the legal consequence of which is the discharge of the principal.

(i) In the given case the B omits to supply the timber. Hence C is discharged from his liability.

Section 136-Agreement made with third person to give time to principal debtor

Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

- (ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence A is not discharged.

129. Sec 137: Creditors forbearance to sue does not discharge surety

B owes C a debt guaranteed by A. C does not sue B for a year after the debt has become payable. In the meantime, B becomes insolvent. Is A discharged? Decide with reference to the provisions of the Indian Contract Act, 1872.

Answer:

Section 137-Creditor's forbearance to sue does not discharge surety

Mere forbearance (delay) on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not in the absence of any provision in the guarantee to the contrary, discharge the surety.

Conclusion

In view of these provisions, A is not discharged from his liability as a surety

130. Sec 141: Surety's right to benefit of creditor's securities.

C advances to B, Rs. 2,00,000 on the guarantee of A. C has also taken further security for the same borrowing by mortgage of B's furniture worth 2,00,000 without knowledge of 'A'. C cancels the mortgage. After 6 months B becomes insolvent and 'C' sues 'A' on his guarantee. Decide the liability of 'A' if the market value of furniture worth Rs. 80,000 under the Indian Contract Act, 1872.

Answer:

Section 141-Surety's right to benefit of creditor's securities

Right to claim securities (Sec 141):

- The surety can claim all the securities which the creditor had at the time of giving the guarantee.
- It is immaterial as to whether the surety had knowledge of such securities or not.
- If the securities are returned by the creditor to the principal debtor, the surety is discharged to the extent of value of the securities so returned.

Conclusion

In the instant case, C advances to B, 2,00,000 rupees on the guarantee of A. C has also taken a further security for Rs. 2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. Rs. 80,000 and will remain liable for balance 1,20,000.

131. Sec 142, 143, 144: Guarantee invalidated

State the conditions when guarantee is considered invalid?

Answer:

Section 142, 143, 144-Guarantee invalidated

The conditions under which the guarantee is invalid or void 1s provided in section 142, 143 and 144 of the Indian Contract Act.

Guarantee obtained by misrepresentation invalid [Sec 142]

Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment invalid [Sec 143]

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Guarantee on contract that creditor shall not act on it until co-surety joins [Sec 144]

Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



132. Guarantee obtained by misrepresentation invalid

Abhi is the owner of electronics shop. Priya reached the shop to purchase an air conditioner whose compressor should be of copper. As Priyanka wanted to purchase the air conditioner on credit, Abhi demand a guarantor for such transaction. Mr. Nil (a friend of Priyanka) came forward and gave the guarantee for payment of air conditioner. Abhi sold the air conditioner of a particular brand, misrepresenting that it is made of copper while it is made of aluminium. Neither Priya nor Mr. Nil had the knowledge of fact that it is made of aluminium. On being aware of the facts, Priya denied for payment of price. Abhi filed the suit against Mr. Nil. Explain with reference to the Indian Contract Act 1872, whether Mr. Nil is liable to pay the price of air conditioner? (RTP)

Answer:

Sec 142: Guarantee obtained by misrepresentation invalid

Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Conclusion

In the given question, Priya wants to purchase air conditioner whose compressor should be of copper, on credit from Abhi. Mr. Nil has given the guarantee for payment of price. Rahul sold the air conditioner of a particular brand on misrepresenting that it is made of copper while it is made of aluminium of which both Priya & Mr. Nil were unaware. After being aware of the facts, Priya denied for payment of price. Abhi filed the suit against Mr. Nil for payment of price.

On the basis of above provisions and facts of the case, as guarantee was obtained by Rahul by misrepresentation of the facts, Mr. Nil will not be liable. He will be discharged from liability.

133. Sec 143: Guarantee obtained by concealment invalid.

Mr. PQ was invited to guarantee an employee Mr. SP who was previously dismissed for dishonesty by the same employer. This fact was not told to Mr. PQ. Later on, the employee embezzled funds. Whether C8 is liable for the financial loss as surety under the provisions of the Indian Contract Act, 1872?

Answer:

Section 143-Guarantee obtained by concealment invalid

Any guarantee which the creditor has obtained by means of keeping SILENCE as to material circumstances, is invalid.

Conclusion

In the given instance, Mr. PQ was invited to give guarantee of an employee Mr. SP to the same employer who previously dismissed Mr. SP or dishonesty. This fact was not told to Mr. PQ Here, keeping silence as to previous dismissal of Mr. BD for dishonesty is a material fact and if Mr. SP later embezzled the funds of the employer, Mr. PQ Will not be held liable for the financial loss as surety since such a contract of guarantee entered is invalid in terms of the above provisions.

134. Sec 143: Guarantee obtained by concealment invalid.

Sec 137: Creditor's forbearance to sue does not discharge surety.

Anuj guaranteed the honesty of Srinath in the employment of Gaurav. Srinath was found guilty of dishonesty in the course of service, but Gaurav continued to employ with him and did not inform Anuj of what has occurred. Subsequently, Srinath committed further acts of dishonesty. Gaurav requires Anuj to make good loss caused by Shree. Discuss the liability of Anuj according to the Indian Contract Act, 1872.

Answer:

Section 143-Guarantee obtained by concealment invalid

Any guarantee which the creditor has obtained by means of keeping SILENCE as to material circumstances, is invalid.

Answer based on Section 143

In the given question, Anuj guarantees the honesty of Srinath who was already in the employment of Gaurav. While this guarantee was obtained, Gaurav kept silence about the previous act of dishonesty by Srinath and Gaurav continues to employ Srinath. Thus, in this case it seems that the guarantee of Srinath by Anuj was obtained by concealment of material circumstances/ keeping silence on material circumstances.

Now, when Srinath again commits an act of dishonesty, Gaurav requires Anuj to make good the loss caused by Shree

In the light of the facts of the case and the provisions of law, it appears that the guarantee was obtained by concealment of material circumstances/ Keeping Silence on material Circumstances. Hence, the guarantee by Anuj of Shree will not be valid.

Section 137-Creditor's forbearance to sue does not discharge surety

Mere forbearance (delay) on the part of the creditor to Sue the principal debtor or to enforce any other remedy against him does not in the absence or any provision in the guarantee to the contrary, discharge the surety.

Alternative Answer based on Section 137

In the given question, it may also be presumed that firstly guarantee was given by Anuj and then Shree committed the first act of dishonesty. in this case section 13/ of the Indian Contract Act, 1872 will be attracted.

Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not in the absence of any provision in the guarantee to the contrary, discharge the surety. n that case, the guarantee by Anuj will remain valid.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



135. Sec 146: Co-sureties liable to contribute equally

Mr. K was in urgent need of money amounting Rs. 5,00,000. He asked Mr. K for the money. Mr E lent the money on the sureties of A, B and N without any contract between P, Q and R regarding the maximum amount they will contribute. Examine whether B can escape liability.

Answer:

Section 146- Co-sureties liable to contribute equally

Equality of burden is the basis of Co-suretyship. Section 146 states that "when 2 or more persons are co-sureties for the same or different debt, or duty, either jointly or severally and whether under the same or different contract and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor."

Conclusion

Accordingly, on the default of K in payment, Q cannot escape from his liability. All the three sureties P, Q and R are liable to pay equally, in absence of any contract between them.

136. Essential Elements in a contract of guarantee.

A agrees to sell goods to B on the guarantee of C for the payment of the price of goods in default of B. Is the agreement of guarantee valid in each of the following alternate cases:

Case 1: If A is a Minor

Case 2: If B is a Minor

Case 3: If C is a minor.

Answer:

Essential Elements in a contract of guarantee

This Question is based on Essential Elements in a contract of guarantee

Guarantee Contract is a contract between the Creditor and the Surety.

So, the Creditor and the Surety must be competent to enter into Contract i.e.,

- They should not be minor.
- They should be persons of sound mind.

Case 1: If A (Creditor) is a Minor

The agreement of guarantee is void because the creditor is incompetent to contract.

Case 2: If B (Principal Debtor) is a Minor

The agreement of guarantee is valid because the capability of the principal debtor does not affect the validity of the agreement of the guarantee.

Case 3: If C (Surety) is a Minor

The agreement of guarantee is void because the surety is incompetent to contract.

137. Essential Elements in a contract of indemnity

T asks R to beat T and promises to indemnify P against the consequences. R beats T and is fined Rs. 50,000. Can P claim 50,000 from T.

Answer:

Essential Elements in a contract of indemnity

This question is based on Essential Elements in a contract of indemnity A contract of indemnity to be valid must fulfil all the essentials of a valid contract. One of the Essential Elements in a contract of indemnity is that its object must be LAWFUL.

Conclusion

In the given case, T asks P to beat X and promises to indemnify R against the consequences. R beats X and is fined 50,000.

P cannot claim Rs. 50,000 from T because the object of the agreement was unlawful.

138. Define 'Contract of Indemnity' as per the Indian Contract Act, 1872. What are the parties to a contract of indemnity? Give an example to explain the contract of indemnity.

Answer:

According to section 124 of the Indian Contract Act, 1872, a contract by which one party promises to Save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

There are two parties in this form of contract. The party who promises to indemnify/ save the other party from loss is known as 'indemnifier', whereas the party who is promised to be saved against the loss is known as 'indemnified' or indemnity holder.

Example: A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of Rs. 5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A as provided in Section 124.

139. Surendra' guarantees "Virendra for the transactions to be done between Virendra' & 'Jitendra during the month of March, 2021. "Virendra supplied goods of Rs. 30,000 on 01.03.2021 and of Rs. 20,000 on 03.03.2021 to 'Jitendra'. On 05.03.2021, 'Surendra' died in a road accident. On 10.03.2021, being ignorant of the death of Surendra', "Virendra further supplied goods of Rs. 40,000. On default in payment by Jitendra on due date, "Virendra sued on legal heirs of 'Surendra' for recovery of Rs. 90,000. Describe, whether legal heirs of 'Surendra' are liable to pay Rs. 90,000 under provisions of Indian Contract Act 1872. What would be your answer, if the estate of 'Surendra is worth of Rs. 45,000 only?

Answer:

According to section 131 of Indian Contract Act 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'Surendra' was surety for the transactions to be done between Virendra & Jitendra' during the month of March 2021. 'Virendra' supplied goods of Rs. 30,000, Rs. 20,000 and of Rs. 40,000 on 01.03.2021, 03.03.2021 and 10.03.2021 respectively. 'Surendra' died in a road accident but this was not in the knowledge of Virendra. When 'Jitendra' defaulted in payment, Virendra' filed suit against legal heirs of 'Surendra' for recovery of full amount i.e. Rs. 90,000.

On the basis of above, it can be said in case of death of surety (Surendra), his legal heirs are liable only for those transactions which were entered before 05.03.2021 i.e. for Rs. 50,000. They are not liable for the transaction done on 10.03.2021 even though Virendra had no knowledge of death of Surendra. Further, if the worth of the estate of deceased is only Rs. 45,000, the legal heirs are liable for this amount only.

140. Mr. Ram was employed as financier in "Swaraj Ltd" on the surety of his good conduct, given by Mr. Janak, a good friend of the director of the company. Mr. Ram was kept on the salary of Rs. 45,000 per month. After 3 years, the company went into losses and so company decided for the cost cutting by retrenching of many employees and reducing the salaries of the employees. Mr. Ram was also proposed either to quit the job or continued with the lower salary of Rs. 35,000 per month. He accepted and continued with the job. After few months, it was reported by accounts department of the company that Mr. Ram manipulated with the funds of the company. As per the provisions of the Indian Contract Act, 1372, analyse the legal positions of Mr. Janak, in the given situations: (i) Mr. Ram has manipulated the funds of the company since the time of his appointment. (ii) Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary.

Answer:

Section 133 of the Indian Contract Act, 1372 deals with the provision related to the discharge of the surety. Provisions states that where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Following is the answer in the light of the above provision:

- In case where, Mr. Ram has manipulated the funds of the company since the time of his appointment. In this case Mr. Janak is liable as a surety for the loss suffered by the Swaraj Company due to manipulation of the funds by Mr. Ram during the three years of his service.
- In case where, Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary. In this case, variance in the terms of the contract (i.e., to work on lower salary) was made without surety's consent. For all the transactions taking place subsequent to such variance, shall discharge the surety for the loss suffered by the Swaraj company.

11. BAILMENT AND PLEDGE

[PP. June 2019]

[9 Marks]

141. State the essential elements of a contract of bailment. Distinguish between the contract of bailment and contract of pledge.

Answer:

Essential elements of a contract of bailment:

- **Contract:** The first condition is that there must be a contract between the two parties for the delivery of goods. Such contract may be express or implied written or oral.
- **Delivery of Goods:** This contract is for the delivery of some movable goods from one person (bailor) to another person (bailee) or to his authorized agent. If the goods are immovable the contract will not be a contract of bailment.
- **Change of Possession:** The possession of goods must be affected by such contract. Mere custody without possession is not a contract of bailment.
- **Purpose of Delivery:** The delivery of the goods is for temporary purposes. It may be for safe-custody, repair, and carriage or for gratuitous use by the bailee.
- **Number of Parties:** There is two parties tender such contract e.g., the bailor and bailee. The person delivering the goods is called the bailor and the person to whom the goods are bailed is called the bailee.
- **Right of Ownership:** In a contract of bailment, the right of ownership remains with an owner (bailor) and is not changed. If the ownership is transferred, the contract will be a contract of sale and is not of bailment.
- **Change of Form:** If the goods bailed are altered in form by the bailee, such as cloth is converted into a shirt still, the contract is one of bailment.
- **Goods in Possession of Bailee:** The delivery of the goods is not essential if the goods are already in the possession of the person who enters into the contract as bailee.
- **Redelivery of Goods:** Under such contract, the goods are redelivered to the bailor or according to his directions upon the fulfilment of the purpose by the bailee.
- **Right of Reward:** In a contract of bailment, both the parties' bailor and the bailee can get a reward but it depends on the nature of the transaction.

Difference between contract of bailment and contract of pledge: -

Particulars	Bailment	Pledge
Purpose	Bailment may be for any purpose e.g. for repairs, safe custody, etc.	Pledge is specifically for securing a debt.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



Right of sale	The bailee can retain the goods and sue for damages, but he has no authority to sell the goods.	The pawnee (pledgee) can sell the goods and recover his debt, if pawnor (pledger) does not pay.
Right to use the goods	Bailee can use the bailed goods if contract so provides.	Pawnee cannot use the goods pledged.

[PP. June 2020 & Dec 2021]

[5 Marks]

142. Short Note on 'Bailment'

Or

What do you mean by bailment? Mention the duties of a bailor in this respect.

Answer:

Section 148 defines the term 'bailment' as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The bailment consists of-

- Bailor – the person delivering the goods is called the 'bailor'; and
- Bailee – the person to whom the goods are delivered is called the 'bailee'.

If a person, already in possession of the goods of other contracts to hold them as a bailee, he thereby becomes the bailee and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

The following are ingredients of the bailment-

- There must be a delivery of specific goods by one person to another;
- The delivery must be for some purpose;
- The delivery must be upon a contract that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the bailor.

Bailments may be classified into voluntary and involuntary. Voluntary bailments are the outcome of an express contract between the parties. Instances of involuntary bailments are found in cases of finders of good or of goods sent to a wrong place, or in excess of the quantity ordered, or in cases where the bailee dies and the subject of bailment comes into the hands of the bailee's heirs.

Where there is no obligation to return the identical article, either in its original or in an altered form, there is no contract of bailment.

[PP June. 2024]

[7 Marks]

143. Enumerate the duties of bailor and care to be taken by bailee in context of bailment.

Answer:

Bailor's duty in context of Bailment:

Section 150 lays down three duties, namely

- It is the duty of the bailor to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks;
- If the bailor does not make such disclosure and some loss or damage results, he is responsible for so much of it as arises to the bailee directly from such faults;
- If the goods are bailed for hire, the bailor is responsible for damage arising to the bailee directly from such faults, whether he was or was not aware of the existence of such faults in the goods bailed.

Examples:

- A lends a horse, which he knows vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damages sustained.
- A hires a carriage of B. the carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by Bailee:

Section 151 provides that in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

In 'Nagalinga Chettiyar V. Kayarohana Chettiyar' – AIR 1915 Mad. 80 it was held that where the standard of care prescribed by Section 151 is not observed the bailee cannot be exonerated from his liability simply because the bailee's goods were also lost along with the goods bailed.

In 'Sirmour Truck Operations Union V. National Insurance Co. Limited' AIR 2011 (NOC) 389(HP) it was held that the carrier cannot be exempted from its own negligence or negligence by his agent where goods carried at 'owner's risk' and cannot escape from the liability to make good loss.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



CASE STUDIES

[RTP Dec. 2018]

144. Rishi leaves a cow in the custody of Sushil to be taken care of. The cow has a calf. Explain the provisions of restorations of goods bailed, in light of the above statement.

Answer:

Restoration of Goods

The bailed goods should be returned after the bailment is over. Section 159 provides for the restoration of goods lent gratuitously and Section 160 provides for return of goods bailed on expiration of time or accomplishment of purpose. Section 161 provides for the responsibility of the bailee when goods are not duly returned.

Section 159 provides that the lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Section 160 provides that it is the duty of the bailee to return, or deliver, according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed has expired, or for the purpose for which they were bailed has been accomplished.

Non delivery of the goods would amount to breach of contract. This section is silent as to the remedies open to a bailor when the bailee has failed to return the goods on his demand. In *Dhian Singh Sobha Singh V. Union of India* - AIR 1958 SC 274 the Supreme Court held that a bailor in the event of non delivery of the goods by the bailee on demand made by him in that behalf was entitled at his election to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof.

Section 161 provides that if the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Section 163 provides that in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Section 165 provides that if several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Section 166 provides that if the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery

Hence in the given case Rishi leaves a cow in the custody of Sushil to be taken care of. The cow has a calf. Sushil is bound to deliver the calf as well as the cow to Rishi.

[RTP Dec. 2018]

145. Ayush stands surety for Binod for any amount which Chintu may lend to 'Binod' from time to time during the next three months subject to a maximum amount of 1,00,000. One month later 'Ayush' revokes the surety, when Chintu had already lent to Binod 10,000.

Referring to the provisions of the Indian Contract Act, 1872. Decide:

- Whether 'Ayush' is discharged from all the liabilities to 'Chintu' for any subsequent loan given to 'Binod'?
- What would be your answer in case 'Binod' makes a default in paying back to 'Chintu' the already borrowed amount of 10,000?

Answer:

Revocation of continuing guarantee: The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

- By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
- By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

So far as the transactions before revocation are concerned, the liability of the surety for previous transactions (i.e. before revocation) remains.

- Thus applying the above provisions in the given case, Ayush is discharged from all the liabilities to Chintu for any subsequent loan.
- (Answer in the second case would differ i.e. Ayush is liable to Chintu for 10,000 on default of Binod since the loan was taken before the notice of revocation was given to Chintu.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



[PP Dec. 2023]

[5 Marks]

146. Mr. X instructed Mr. Y to sale a property under his possession at ₹ 5 Lakhs. Mr. X does not have the right to dispose the said property & he does not know this & he sold the property for 5 lakhs & handed over the sale proceeds to Mr. X. Later Mr. Z, the real owner of the property sued Mr. Y to cover the value of the property & costs. Now, you advice Mr. Y what he is do?

Answer:

As per section 166 of Indian Contract Act, 1872, if the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

As per section 167 of Indian Contract Act, 1872, if a person, other than the bailor, claims goods bailed he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

In given case, Mr. Y was instructed by Mr. X to sell a property under his possession in spite of the fact that Mr. X didn't have any rights to sell the same. Mr. Y being unaware about the facts sold the same & handed over the proceeds to Mr. X. The proceeds were later demanded from Mr. Y by Mr. Z, the original owner.

As per the above stated provisions, it can be said that Mr. Y made the deal & handed over the proceeds to Mr. X in good faith as he was not aware of the true ownership. So, he will not be responsible to the true owner i.e. Mr. Z. Therefore, Mr. Z cannot demand the cost or the proceeds from Mr. Y. Instead, he can apply to the Court to decide the title of the goods only as delivery has already been made & also apply for the payment from Mr. X.

[PP Dec. 2023]

[7 Marks]

147. Mr X bails 100 bales of cotton marked with particulars mark to Mr Y after receiving the cotton Mr. Y without Mr. X consent mixes the 100 bales with other bales of his own bearing a different mark.

Two days later, Mr. X requests Mr. Y to return at least 50 bales of cotton marked with particular on urgent basis. Mr. Y refuses to do so & informed Mr. X that he has mixed all cotton bales with other bales with other bales kept in the warehouse. So Mr. Y will have to separate the cotton bales received from Mr. X by deploying additional labourers & then only it will be possible to send back the 50 bales of cotton for which Mr. X will have to pay the labour charges for the purpose.

Mr. X is not willing to pay the labour charges & asks Mr. Y to return at least 50 bales of cotton.

Decide the case & present your expert opinion.

Answer:

The goods of the bailor may be mixed with the goods of the bailee with or without the consent to the bailor.

As per section 156 of Indian Contract Act, 1872, if the bailee without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the property in the goods remains in the parties, respectively, but the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture.

As per section 157 of Indian Contract Act, 1872, if the bailee, without the consent of the bailor, mixed the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given case, Mr. Y mixes the cotton bales of Mr. X with particular mark without consent of Mr. X with his own bales of cotton. Also he demands separation charges from Mr. X if Mr. X wants delivery of bales.

As per Section 156 of the Act, Mr. Y mixes his goods with goods of Mr. X without X's consent. The goods are separable as they have particular marks. The property of goods remains in the respective owners.

So, Mr. Y is fault. He will have to bear the separation charges and any damages arising from the mixture. He cannot demand the same from Mr. X. Thus, Mr. Y shall get the goods separated & will also bear the expenses related to it.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



[RTP June, 2018]

148. Sidhartha guarantees to Ajay payment for iron to be supplied by him to Piyu to the amount of 3,000 tons. Piyu and Ajay have privately agreed that Piyu would pay 5 rupees per ton beyond the market price, such excess to be applied to the liquidation of an old debt. This agreement is concealed from Sidhartha.

Answer:

Section 143 states that, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Sidhartha is not liable as a surety since Ajay (the creditor) has obtained the guarantee from Sidhartha by means of keeping silence as to material circumstances (i.e. Piyu paying an excess of 5 rupees per ton to be applied in liquidation of an old debt).

[PP June, 2018]

[4 Marks]

149. A stands surety for B for any amount which C may lend to B from time to time during the next three months subject to a maximum of ₹50,000. One month later A revokes the guarantee, when C had lent to B ₹5,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether A is dis-charged from all the liabilities to C for any subsequent loan. What would be your answer in case B makes a default in paying back to C the money already borrowed i.e. ₹5,000?

Answer:

As per Section 130 of the Indian Contract Act, 1872, a surety may at any time revoke continuing guarantee as to future transactions by giving notice to the creditor.

As per Section 131 of the Indian Contract Act, 1872, the death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

The liability of the surety for previous transactions however remains.

In given case, applying the above provisions A is discharged from all the liabilities to C for any subsequent loan i.e. loan made after revocation. He shall not be liable as the amount was lent after revocation

Answer in the second case would differ i.e. A is liable to C for ₹5,000 on default of B since the loan was made before the notice of revocation was given to C.

150. Sec 148 Bailment

Examine whether the following constitute a contract of "Bailment" under the provisions of the Indian Contract Act, 1872:

- (i) V parks his car at a parking lot, locks it, and keeps the keys with himself.
- (ii) Seizure of goods by customs authorities.

Answer:

Section 148- Bailment

A 'bailment' is the delivery of goods by one person (Bailor) to another (Bailee) for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them (Bailor).

- (i) Parking a car and keeping the keys with the driver/Parking lot manager is not bailment. It is renting of space and not bailment of car.
- (ii) Seizure of goods by customs authorities is bailment.

151. Sec 148: Essential elements of bailment & Difference between Bailment & Pledge.

State the essential elements of a contract of bailment. Distinguish between the 'contract of bailment' and 'contract of pledge'

Or

State the essential elements of a contract of bailment. Give differences between Bailment and Pledge.

Answer:

Section 148-Essential elements of bailment

A 'bailment' is the delivery of goods by one person (Bailor) to another (Bailee) for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them (Bailor).

Essentials of a valid contract of bailment

- a) Contract: There must be a contract which must either express or implied.
- b) Goods: Bailment can be made of goods only.
- c) Delivery: There must be delivery of goods by one person to another person.
- d) Purpose of delivery: The goods must be delivered for some purpose and such purpose must be expressed or implied.
- e) Return or disposal of goods: The delivery of goods must be conditional. The condition shall be that the goods shall be returned (either in original form or in any altered form); or disposed of according to the

QUESTION BANK

CA AKASH AGARWAL

ICA, 1872

152. Sec 149: Constructive Delivery

Sham, the bailor, pledges a cinema projector and other associates with Movie Association Co-operative Bank Limited, the bailee, for a loan. Sham 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 Indian Contract Act, 1872 decide, whether a valid contract of pledges has been made between Sham, the bailor and Bank, the bailee?

Answer:

Section 149-Constructive Delivery

Constructive delivery (Deemed Delivery): The custody of goods is not transferred but only an acknowledgement (attornment) is made. According to explanation to section 148 a person already in possession of goods may become a bailee by a subsequent agreement.

Attornment or Acknowledgement: It means communication to the recipient that the "Person is holding the goods on behalf of the recipient like an agent".

Conclusion

In the given problem the delivery of the goods is constructive i.e. delivery by attornment to the bailee (pawnee) and the possession of the goods by Ram, the bailor is construed 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 transaction was, therefore, a valid pledge.

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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 transaction was, therefore, a valid pledge.

154. Sec 150: Bailor's duty to disclose faults in goods bailed.

A hire a carriage of S and agrees to pay 500 as hire charges. The carriage is unsafe, though R is unaware of it. S is injured and claims compensation for injuries suffered by him. R refuses to pay. Discuss the liability of R.

Answer:

Section 150-Bailor's duty to disclose faults in goods bailed.

In case of non-gratuitous bailment, the bailor is liable to disclose all the faults whether known to him or not. If he fails to disclose such facts, he shall be liable for damages for any loss caused to the bailee whether or not he was aware of the faults.

Conclusion

Accordingly, applying the above provisions in the given case, B is responsible to compensate S for the injuries sustained even if he was not aware of the defect in the carriage.

155. Sec 151: Care to be taken by the Bailee

A bails his jewellery with R on the condition to safeguard it in a bank's safe locker. However, R kept it in safe locker at his residence, where he usually keeps his own jewellery. After a month all jewellery was lost in a religious riot. A filed a suit against R for recovery. Referring to provisions of the Indian Contract Act, 1872, that whether S will succeed.

Answer:

Section 151-Care to be taken by the Bailee

The bailee must take such care of goods as a man of ordinary prudence would take care of his own goods.

Conclusion

Referring to the Section 151 of the Indian Contract Act, 1872, B is liable to compensate A for his negligence to keep jewellery at his residence. Here, S and R agreed to keep the jewellery at the Bank's safe locker and not at the latter's residence.

156. Sec 154: Liability of bailee making unauthorized use of goods bailed

What is the liability of a bailee making unauthorized use of goods bailed?

Answer:

Section 154-Liability of bailee making unauthorized use of goods bailed

The bailee must not make unauthorized use of the goods. If he makes any unauthorized use of the goods, the bailee shall be liable for any loss or damage even if such loss is caused due to an act of God or other unavoidable reasons.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



157. Sec 157: Effect of mixture, without bailor's consent, when the goods cannot be separated. Vivan Bailed 50 kg of high-quality sugar to Sumedh, who owned a kiran shop, promising to give R200 at the time of taking back the bailed goods. Sumedh's employee unaware of this, mixed the 50 kg of sugar belonging to Amar with the Sugar in the shop and packaged it for sale when Sumedh was away. This came to light only when Amar came asking for the sugar he had bailed with Sumedh, as the price of the specific quality of sugar had trebled. What is the remedy available to Vivan?

Answer:

Section 157-Effect of mixture, without bailor's consent, when the goods cannot be separated.

Mixture without Bailor's Consent of inseparable goods:

If the goods are mixed without the consent of the bailor and such goods are NOT separable, then, the bailee shall compensate the bailor for any loss caused to him. Bailee shall pay Loss due to mixture (Price difference).

Conclusion

In the given question, Sumedh's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated. As Sumedh's employee has mixed the two kinds of sugar, he (Sumedh) must compensate Vivan for the loss of his sugar.

158. Sec 160 & 161: Duty of Bailee to return the goods after Purpose is accomplished. Kunal delivered his car to Mahesh for repairs Mangesh completed the work but did not return the car to Sunil within reasonable time, though Kunal repeatedly reminded Mahesh for the return of car. In the meantime a big fire occurred in the neighbourhood and the car was destroyed. Decide whether Mangesh can be held liable under the provisions of the Indian Contract Act. 1872.

Answer:

Sec 160 & 161: Duty of Bailee to return the goods after Purpose is accomplished.

Duty to return the Goods: The bailee must return the goods without waiting for demand from bailor, if the time specified in the contract has expired or the purpose specified in the contract is accomplished. (Section 160)

Liability if goods not returned as above: If the goods are not so returned, then the goods shall be at the risk of the bailee and the he shall be liable for any loss or damage, even if such loss is caused without his fault or negligence or due to an act of God or other unavoidable reasons, (Section 161)

Conclusion

Therefore, in the instant case, Mahesh is liable.

159. Sec 161: Bailee's responsibility when goods are not duly returned.

U gives his umbrella to D during raining season to be used for two days during Examinations. U keeps the umbrella for a week. While going to D's house to return the umbrella, U accidentally slips and the umbrella is badly damaged. Who bear the loss and why?

Answer:

Sec 161: Bailee's responsibility when goods are not duly returned.

If the goods are not returned after the specified time has expired or after the specified purpose is achieved, then the goods shall be at the risk of the bailee and the he shall be liable for any loss or damage, even if Such loss is caused without his fault or negligence or due to an act of God or other unavoidable reasons (Section 161)

Conclusion

U shall have to bear the loss since he failed to return the umbrella within the stipulated time

160. Sec 163: Return Accretion to Goods.

P lends a sum of 5,000 to T, on the security of 200 shares of a Limited Company on 1st April 2007. On 15th June, 2007, the company issued 200 bonus shares. T returns the loan amount of Rs 5,000 with interest but P returns only 200 shares which were pledged and refuse to give the 200 bonus shares. Advise T in the light of the provisions of the Indian Contract Act, 1872.

Answer:

Section- 163 Return Accretion to Goods

In the absence of any contract to the contrary, The bailee must return to the bailor any accretion (i.e., increase or profit) to the goods bailed.

Conclusion

Hence the Pledger (B) has the right to claim the 200 bonus shares as well as the 200 Original Shares after repaying the debt in full.

161. Sec 163: Return Accretion to Goods

Mr. Chetan owns a chicken farm near Gurgaon, where he breeds them and sells eggs and live chicken to retail shops in Gurgaon. Mr. Rishabh also owns a similar firm near Gurgaon, doing the Same business. Mr. Rishabh had to go back to his native place in Australia for one year. He needed money for travel so he had pledged his farm to Mr. Chetan for one year and received a deposit of 25 lakhs and went away. At that point of time, stock of live birds were 100,000 and eggs 10,000. The condition was that when Rishabh returns, he will repay the deposit and take possession of his firm with live birds and eggs.

After one year Rishabh came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs. Mr. Chetan agreed to return 100,000 live birds and 10,000 eggs only .

State the duties of Mr. Chetan as Pawnee and advise Mr. Rishabh about his rights in the given case.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



Answer:

Section- 163 Return Accretion to Goods

In the absence of any contract to the contrary, The bailee must return to the bailor any accretion (i.e., increase or profit) to the goods bailed.

Conclusion

In the given question, when Mr. Rishabh returned from Australia there were 1,00,00 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Rishabh). Mr. Chetan agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

Duties of Mr. Chetan: Mr. Chetan (pawnee) is bound to deliver to Mr. Rishabh (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e. the live birds and eggs).

Right of Mr. Rishabh: Mr. Rishabh is entitled to recover from Pawnee any increase in goods so pledged.

162. Sec 168: Right of finder; Sec 169: When finder of thing commonly on sale may sell it.

What are the rights available to the finder of the lost goods under section 168 and section 169 of the Indian Contract Act, 1872.

Answer:

Sec 168: Right of finder;

Sec 169: When finder of thing commonly on sale may sell it.

Right to recover expenses (Sec 168)

The finder of the goods has the right to recover the expenses voluntarily incurred by him for finding the true owner and preserving the goods. He can exercise right of particular LIEN and has NO right to sue the owner.

Right to recover the reward (Sec 168)

He has the right to recover the reward declared by the true owner for finding the goods. He can exercise right of particular lien and has the right to sue the owner.

Right of sale of goods (Sec 169)

- The true owner cannot be found with reasonable diligence.
- If the true owner is found, he refuses to pay the lawful expenses incurred by the finder of the goods
- The goods are in danger of perishing or losing a greater part of its value.
- The lawful charges of the finder, in respect of the goods found, amounts to 2/3rd of the value of goods.

163. Section 171 - General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

Sachin borrowed a sum of Rs. 50,000 from a Bank on the security of gold on 1.07.2019 under an agreement which contains a clause that the bank shall have a right of PARTICULAR lien on the gold pledge with it. Sachin thereafter took an unsecured loan of Rs. 20,000 from the same bank on 1.08.2019 for three months. On 30.09.2019 he repaid entire secured loan of 50,000 and requested the bank to release the gold pledged with it. The Bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Sachin. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872?

Answer:

Section 171 - General lien of bankers, factors, wharfingers, attorneys and policy-brokers

Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Conclusion

In the given case, the loan agreement specifically contains a clause that the bank shall have a right of particular lien on the gold pledged with it.

Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of 20,000/- (which is the second loan) is not valid.

164. Sec 173: Right to retain the pledged goods

Whether a Pawnee has a right to retain the goods pledge.

Answer:

Sec 173: Right to retain the pledged goods

The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the Interest, and all Necessary Expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

165. Sec 178A: Pledge by person in possession under voidable contract

Sudha acquired valuable diamond at a very low price by a voidable contract under the provision of Indian Contract Act, 1872. The voidable contract was not rescinded. Sudha pledged the diamond with Mr. RK. Is this a valid pledge under the Indian Contract Act, 1872.

Answer:

Section 178A - Pledge by person in possession under voidable contract

When the pawnor has obtained possession of the goods pledged by him under a voidable Contract u/s 19 or 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), but the contract has not been rescinded at the time of the pledge, the pawnee acquires a Good Title to the goods, provided:

- he acts in good faith and

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



(2) without notice of the pawnor's defect of title.

Conclusion

Therefore, the pledge of diamond by Sudha with Mr. RK is valid.

166. Sec 180: Rights of Pawnee to receive the entire goods from the 3rd Party

Sec 181: Apportionment of relief or compensation obtained by such suits

Naitik sent a consignment of goods worth 60,000 by railway and got railway receipt. He obtained an advance of 30,000 from the bank and endorsed and delivered the railway receipt in favour of the bank by way of security. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for 60,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

Answer:

Sec 180: Rights of Pawnee to receive the entire goods from the 3rd Party

Pawnee's rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pawnee would have all such remedies that the owner of the goods would have against them. [Sec 180]

In BOM Bank Ltd. vs. Union of India, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment.

However, the amount over and above his interest will be handed back to the pledgor.

Section 181: Apportionment of relief or compensation obtained by such suits

Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Conclusion

However, the amount over and above his interest is to be held by him in trust for bank the pledgor. Thus, the will succeed in this claim of Rs. 60,000 against Railway. Out of the amount of Rs. 60,000, the bank shall keep its due amount and return the balance to the Pawnor (Naitik).

167. On the basis of reward, what are various categories of bailment?

Answer:

On the basis of reward, bailment can be classified into two types:

- Gratuitous Bailment:** The word gratuitous means free of charge. So, a gratuitous bailment is one when the provider of service does it gratuitously i.e. free of charge. Such bailment would be either for the exclusive benefits of bailor or bailee.
- Non-Gratuitous Bailment:** Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee

168. Amit lends a horse to Bimal for his own riding only. However, Bimal allows Chinku, a member of his family to ride the horse. Chinku rides the horse with care, but the horse falls and is injured as per the provisions of the Indian Contract Act, 1872, analyse the liability of Bimal in the given situation.

Answer:

According to section 154 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them. Hence, Bimal is liable to make compensation to Amit for the injury done to the horse.

169. Mr. Avinash wanted a loan for expanding his business. from ABC Bank. Mr. Avinash has pledged the stock of his business to obtain the loan from bank. However, the expansion of business did not reap the desired results and Mr. Avinash was not able to repay the loan. Now, ABC bank wants to retain the stock for adjustment of their loan. Advise, ABC Bank whether they can retain the stock for the adjustment of their loan and also for payment of interest. Give your answer as per the provisions of the Contract Act, 1872.

Answer:

According to section 173 of the Indian Contract Act, 1872, the Pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. Hence, ABC Bank can retain the stock of business of Mr. Avinash, not only for adjustment of the loan but also for payment of interest.

170. As per the Indian Contract Act, 1872, answer the following:

- Definition of Pledge, pawnor and pawnee
- Essential characteristics of contract of pledge

Answer:

(i) "Pledge", "pawnor" and "pawnee" defined [Section 172]:

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge".

The bailor is in this case called the "pawnor. The bailee is called the pawnee".

(ii) Since Pledge is a special kind of bailment, all the essential of bailment are also essentials of Pledge. Apart from that, the characteristics of the pledge are:

- There shall be a bailment of security against payment or performance of the promise.
- The subject matter of pledge is goods.
- Goods pledged for shall be in existence
- There shall be delivery of goods from pledger to pledgee.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



12. AGENCY

[PP. June 2018, Dec 2023, MQP Dec 2023, MTP. June 2020 & June 2023]

[7 Marks]

171. State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of the principal?

Answer:

The general rule of the Indian Contracts Act, 1872 states that:

- Only the principal can enforce and can be held liable on a contract entered into by an agent.
- The agent is not personally liable on a contract entered into by him on behalf of the principal.

The following are the exceptions to the above rule:

- Foreign Principal: When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.
- Personal liability by agreement: Where it is expressly provided in the contract that the agent shall be personally liable.
- Undisclosed principal: Where agent does not disclose the name/identity of the principal.
- Principal cannot be sued: Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.
- Non-existence of Principal: When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.
- Agent's liability: When the agent exceeds his authority or commits a breach of warranty of authority.
- Pretended Agent: When he acts as a pretended agent.
- Mistake or Fraud: When he receives or pays money by mistake or fraud.
- Agent sign an agreement without mentioning that he is an agent: Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.
- Trade or customs: Where the usage of trade or custom makes an agent personally liable.

[MTP June, 2020]

[5 Marks]

172. How the agency can be terminated?

Answer:

Termination of Agency Section 201 provides for the termination of agency. An agency is terminated by the principal-

- revoking his authority; or
- by the agent renouncing the business of the agency; or
- by the business of the agency being completed; or
- by either the principal or agent dying or becoming of unsound mind; or
- by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Section 202 provides that where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Section 208 provides as to the time at which the agent's authority is terminated as to agent and as to third persons. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

[PP. Dec 2021]

[6 Marks]

173. Differentiate between negotiation & assignment.

Answer:

Consideration	Consideration is presumed until contra is proved.	Consideration must be proved.
Title	If transferee is a holder in due course, he takes the instrument free from an defects.	Assignee's title is always subject to defences and equities between the original debtor and assignor.
Notice of transfer	Notice of transfer is not necessary	Notice of assignment must be given.
Mode of delivery	Negotiation is effected by delivery in case of instruments payable to bearer and by delivery and endorsement in case of instrument a able to order.	Assignment is effected only by writing.
Suit	Transferee can sue the third party in his own name.	Assignee cannot do so.
Presumptions	There are a number of presumptions in favour of holder in due courses.	There are no such presumptions.

QUESTION BANK

CA AKASH AGARWAL

ICA, 1672

CASE STUDIES

[RTP Dec. 2018]

174. Mr. Bright instructs Ujjwal, a merchant, to buy a ship for him. Ujjwal employs a ship surveyor of good reputation to choose a ship for Mr. Bright. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bright holds Ujjwal responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Ujjwal is responsible to Mr. Bright?

Answer:

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Ujjwal is not, but the surveyor is, responsible to Mr. Bright.

[PP Dec. 2018]

[5 Marks]

175. C is the wife of A. She purchased some sarees on credit from B. B demanded the amount from A. A refused. B filed a suit against A for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether B would succeed.

Answer:

This case is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872.

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 married 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 necessities. But the legal presumption can be rebutted in the following cases:

- Where the goods purchased on credit are not necessities.
- Where the wife is given sufficient money for purchasing necessities.
- Where the wife is forbidden from purchasing anything on credit or contracting debts.
- Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessities. This legal presumption can be rebutted only in last 2 cases.

Applying the above conditions, B will succeed. He can recover the said amount from A if sarees purchased by C are necessities for her.

176. Sec 184: Who may be an agent.

A appoints M, a minor, as his agent to sell his watch for cash at a price not less than R700. M sells it to D for 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

Answer:

Section 184-Who may be an agent

As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf therein contained.

Although Agent may be a minor or of unsound mind, however, as a precaution, a minor or a person of Unsound mind usually, should not be appointed as an agent because he is incompetent to contract and in case of his misconduct or negligence, the principal shall not be able to proceed against him.

Conclusion

In the given case, A has appointed a Minor (M) as an agent. The appointment itself is valid, but the minor Agent (M) shall not be liable to the principal (A) for negligence in the performance of duties. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

177. Sec 186, 187- Implied Agency

D is the wife of W. She purchased some sarees on Credit from W. W demanded the amount from W. W refused. U filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether U would succeed?
TD

Or

D is the wife of W. She purchased sarees on credit from Nandini. Nandini demanded the amount from W. W refused. Nandini filed a suit against W for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Nandini would succeed.

Or

Aarthi is the wife of Pratham. She purchased some sarees on credit from M/s Harshit Jaipur. M/s Harshit, Jaipur demanded the amount from Pratham. Pratham refused. M/s Harshit, Jaipur filed a suit against Pratham for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether M/s Harshit, Jaipur would succeed?

Answer:

Sec 186, 187- Implied Agency

Implied Agency: An agency is said to be implied when it is to be inferred from

QUESTION BANK



CA AKASH AGARWAL

ICA, 1672



(a) the circumstances of the case [Husband-Wife for necessities],

(b) conduct of the parties, or

(c) the ordinary course of dealing

Wife is Implied Agent of Husband for purchase of necessities If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's Credit for necessities.

But the legal presumption can be rebutted in the following cases:

(i) Where the goods purchased on credit are not necessities.

(ii) Where the wife is given sufficient money for purchasing necessities.

(iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.

(iv) Where the trader has been expressly warned not to give credit to his wife

Conclusion

Applying the above conditions in the given case 'U' will succeed. He can recover the said amount from 'W' if sarees purchased by 'D' are necessities for her.

178. Sec 189: Agent's authority in an emergency.

Ramesh, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Ramesh was stranded for more than two days. Ramesh sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Ramesh on the ground that Ramesh had acted beyond his authority?

Or

Mr. Savant, a cargo owner, chartered a vessel to carry a cargo of wheat from a foreign port to Chennai. The vessel got stranded on a reef in the sea 300 miles from the destination. The ship's managing agents signed a salvage agreement for Mr. Savant. The goods (wheat) being perishable, the salvors stored it at their own expense. Salvors intimated the whole incident to the cargo owner. Mr. Savant refuse to reimburse the Salvor, as it is the Ship-owner, being the bailee of the cargo, who was liable to reimburse the salvor until the contract remained untermiated. Referring to the provision of The Indian Contract Act 1872, do you acknowledge or decline the act of Salvor, as an agent of necessity, for Mr. Savant. Explain?

Answer:

Section 189-Agent's authority in an emergency

An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Conclusion to 1st Question

In the instant case, Ramesh, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Here, Ramesh acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Conclusion to 2nd Question

Hence, in the above case the Salvor had implied authority from the cargo owner to take care of the cargo.

They acted as agents of necessity on behalf of the cargo owner. Cargo owner were duty-bound towards salvor. Salvor is entitled to recover the agreed sum from Mr. Savant and not from the ship owner, as a lien on the goods.

179. Sec 192: Representation of principal by sub-agent properly appointed

Sec 193: Agent's responsibility for sub-agent appointed without authority

Comment on the statement 'Principal is not always bound by the acts of a sub-agent.'

Answer:

Sec 192: Representation of principal by sub-agent properly appointed

Principal is liable to Third Parties for acts of sub agents

Where a sub-agent is properly appointed, then the principal is, so far as regards third persons, is bound and responsible for the acts of sub-agent as if he were an agent originally appointed by the principal.

In Simple words, where a sub-agent is properly appointed, then the Principal is bound by the acts of a sub-agent.

Sec 193: Agent's responsibility for sub-agent appointed without authority

Agent is liable to both Principal & Third Parties

Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, then the agent is responsible for sub-agent's acts both to the principal and to third persons.

In simple words, where a sub-agent is not properly appointed, then the Principal is not bound by the acts of a sub-agent.

180. Sec 195: Agent's duty in naming such person.

Amit consigned electronic goods for sale to Amit. Amit employed Vansh a reputed auctioneer to sell the goods consigned to him through auction. Amit authorized Vansh to receive the proceeds and transfer those proceeds once in 45 days. Vansh sold goods on auction, became insolvent. Assess the liability of Amit according to the provisions of the Indian Contract Act, 1872.

Answer:

Sec 195: Agent's duty in naming such person

In selecting Substituted Agent for his principal, an agent is bound to exercise the same amount of discretion as a man of Ordinary Prudence would exercise in his own case: and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Conclusion

QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



Hence, if Amit has exercised same amount of diligence as a man of ordinary prudence would, he shall not be responsible to Amit for the proceeds of the auction.

181. Sec 196: Agency by Ratification

"The relationship of principal and agent (i.e. Agency) may be constituted by Subsequent ratification by the principal" Examine the validity of the statement and state the requisites of a valid ratification in the light of the provisions of the Indian Contract Act, 1872.

Answer:

Sec 196-Agency by Ratification

Definition: Ratification means subsequent Approval of an unauthorized act.

- 1) Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts.
- 2) If he ratifies them, the same effects will follow as if they had been performed by his authority. The principal is bound by the acts ratified by him as if such acts had been performed by his authority.

Requisites of a Valid Ratification

- a) Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done. (Sec 197)
- b) No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. (Sec 198)
- c) A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part. There can be ratification of an act in entirety or its rejection in entirety. (Sec 199)
- d) When the interest of third parties is affected, the principle of ratification does not apply. Ratification of unauthorized act cannot injure third person (Sec 200)
- e) Ratification must be made within a reasonable period of time.
- f) Ratification must be communicated to the other party.
- g) Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital, forgery of signatures, any other criminal offence, or anything which is not permitted under law.

182. Sec 198: Knowledge requisite for valid ratification.

State with reason whether the following statement is correct or incorrect:

Ratification of agency is valid even if knowledge of the principal is materially defective.

Answer:

Sec 198- Knowledge requisite for valid ratification.

Incorrect: Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case.

If the principal's knowledge is materially defective, the ratification is not valid and hence no agency

183. Sec 200: Ratification of unauthorized act cannot injure third person.

A rented his house to B on lease for 3 years. The lease agreement is terminable on 3 month notice by either party. C, the son of A, being in need of a separate house to live, served a notice on B, without any authority, to vacate the house within a month and requested his father A to ratify his action. Examine whether it shall be valid for A to ratify the action of C taking into account the provisions of the Indian Contract Act, 1872?

Answer:

Sec 200- Ratification of unauthorized act cannot injure third person.

An act done by one person on behalf of another, without such other person's authority, which if done authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

Conclusion

In the given instance, A rented his house to B on lease for 3 years. The lease agreement was terminable on three months' notice. C, son of A, gives notice of termination to B, without any authority, to vacate the house within a month. Also requested A to ratify his action.

In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



184. Sec 202: Irrevocable Agency/Agency coupled with Interest (ACWI)

Bhaskar borrowed a sum of 3 lacs from Vishal. Bhaskar appointed Vishal as his agent to sell his land and authorised him to appropriate the amount of loan out of sale proceeds. Afterwards, Bhaskar revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhaskar was lawful.

Or

Aarav borrowed a sum of 3 lakh from Rakesh. Aarav appointed Rakesh as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterwards, Aarav revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Aarav is lawful?

Or

Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:

A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. Afterwards, A becomes insane

Answer:

Sec 202: Irrevocable Agency/Agency coupled with Interest (ACWI)

1. When the agency is created for securing some benefits to the agent over and above his remuneration as an agent, it is called as agency coupled with interest.
2. The interest should exist at the time of creation or agency. If the interest arises after the creation of agency then it would not be called as agency coupled with interest.
3. Agency coupled with interest CANNOT be terminated to the prejudice of such interest. It does not terminate even on the death or insanity or the principal. Thus, Such an agency is irrevocable to the extent of such interest.

Conclusion to 1st & 2nd Question

Thus, when Bhaskar appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favor of Vishal and the said agency is NOT revocable. The revocation of agency by Bhaskar is not lawful.

Conclusion to 3rd Question

As per the facts of the question and provision of law, A cannot revoke this authority, nor it can be terminated by his insanity.

185. Sec 191: "Sub-agent" defined; Sec 210: Termination of sub-agent's authority

Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:

A appoints B as A's agent to sell A's land. B, under the authority of A, appoints C as agent of B. Afterwards, A revokes the authority of B but not of C. What is the status of agency of C?

Answer:

Sec 191: "Sub-agent" defined

A "Sub-agent" is a person employed by and acting under the control of, the original agent in the business of the agency

Sec 210: Termination of sub-agent's authority

The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him.

Conclusion

In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub-agent.

Thus, when A revokes the authority of B (agent), it results in termination of authority of sub-agent appointed by B i.e. C (sub-agent).

186. Sec 211: Agent's duty to follow instructions or customs

TATA Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Rinku, one of the agents sold goods of TATA Ltd. to M/s. Pavan Pvt. Ltd. (on credit) which was insolvent at the time of such sale. TATA Ltd. sued Mr. Rinku for compensation towards the loss caused due to sale of products to M/s. Pavan Pvt. Ltd. Will TATA Ltd. succeed in its claim?

Answer:

Sec 211: Agent's duty to follow instructions or customs

An agent is bound to conduct the business of his principal according to the DIRECTION given by the principal, or, in the absence of any such directions, according to the CUSTOMS of TRADE. When the agent acts otherwise and any loss is sustained by the Principal, he must indemnify him, and, if any profit accrues, he must account for it.

Conclusion

In the present case, Mr. Rinku, one of the agents, sold goods of ABC Ltd. to M/s Pavan Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in TATA Ltd. to sell the products on credit.

Hence, Mr. Rinku must make good the loss to TATA Ltd.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



187. Sec 215: Right of principal when agent deals, on his own account, without principal's consent & Sec 216: Principal's right to benefit gained by agent dealing on his own account.

Mr. ANUSHKA of Delhi engaged Mr. Rathod as his agent to buy a house in West Extension area. Mr. Rathod bought a house for 20 lakhs in the name of a nominee and then purchased it himself for 24 lakhs. He then sold the same house to Mr. Anushka for Rs. 26 lakhs. Mr. Anushka later comes to know the mischief of Mr. Rathod and tries to recover the excess amount paid to Mr. Rathod. Is he entitled to recover any amount from Mr. Rathod? If so, how much? Explain.

Answer:

Sec 215: Right of principal when agent deals, on his own account, without principal's consent

If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal, the principal may REPUDIATE the transaction, if the case shows that:

- (1) either that any material fact has been dishonestly concealed from him by the agent, or
- (2) that the dealings of the agent have been disadvantageous to him.

Sec 216: Principal's right to benefit gained by agent dealing on his own account

The principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Conclusion

Therefore, when agent deals, on his own account, in business of agency without principal's consent for his own benefit, then the Principal has following remedies:

- Principal can repudiate the transaction. (Sec 215)
- Principal can claim Secret benefits. (Sec 216)

In the given case, Mr. Rathod (Agent) bought the house himself for 20 lakhs in his own name instead of buying it for Mr. Anushka (Principal) for Rs. 20 lakhs. Then he sold it to Mr. Anushka (Principal) for 26 lakhs, thereby making a profit of Rs. 6 lakhs.

Therefore, based on the above provisions, Mr. Anushka is entitled to recover 6 lakhs from Mr. Rathod being the amount of profit earned by Mr. Rathod out of the transaction.

188. Section 226: Principal's liability for the Acts of the Agent;

Section 228: Principal not bound when excess of agent's authority is not separable

X has made an agency agreement with Y to authorize him to purchase goods on the behalf of X for the year 2020 only. The agency agreement was signed by both and it contains all the terms and conditions for the agent. It has a condition that Y is allowed to purchase goods maximum up to the value of Rs 10 lakhs only. In the month of April 2020, Y has purchased a single item of R 12 lakhs from Z as an agent of X. The market value of the item purchased was 14 lakhs but a discount of 2 lakhs was given by Z. The agent Y has purchased this item due to heavy discount offered and the financially benefit to X.

After delivery of the item Z has demanded the payment from X as Y is the agent of X. But X denied to make the payment stating that Y has exceeded his authority as an agent therefore he is not liable for this purchase. Z has filed a suit against X for payment. Decide whether Z will succeed in his suit against X for recovery of payment as per provisions of The Indian Contract Act, 1872.

Answer:

Section 226: Principal's liability for the Acts of the Agent

Principal is liable for the acts of agents which are within the scope of his authority. Contracts entered into through an agent may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into by the principal in person.

Section 228: Principal not bound when excess of agent's authority is not separable

1. Where an agent does more than he is authorized to do, and
2. What he does beyond the scope of his authority cannot be separated from what is within it,
3. The principal is not bound to recognize the transaction.

Conclusion

As said above, liability remains that of the principal unless there is a contract to the contrary. The agency agreement clearly specifies the scope of authority of Y for the purchase of goods, however he exceeded his authority as an agent. Therefore, in the light of section 228 as stated above, since the transaction is not separable, x is not bound to recognize the transaction entered between Z and Y, and therefore may repudiate the whole transaction. Hence, Z will not succeed in his suit against X for recovery of payment.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



189. Sec 230: Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.
Sec 235: Liability of pretended agent.

"An agent is neither personally liable nor can he personally enforce the contract on behalf of the principal." Comment.

Answer:

Section 230, 235-Agent cannot personally enforce, nor be bound by, contracts on behalf of principal
In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.

Exceptions: In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

- (1) **Foreign Principal:** Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal.
- (2) **Undisclosed Principal:** Where the agent does not disclose the name of his principal or undisclosed principal.
- (3) **Non-existent or incompetent principal:** Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.
- (4) **Pretended Agent:** If the agent pretends but is not an actual agent, and the principal does not ratify the act but disowns it, the pretended agent will be himself liable (Section 235).
- (5) **When agent exceeds authority:** When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act, then the agent can be made liable personally for the breach of warranty of authority.

190. Explain the following as per the provisions of the Indian Contract Act, 1872

- (i) What is the meaning of Agent and Principal?
- (ii) Who can appoint an agent.

Answer:

- a) **Agent:** means a person employed to do any act for another or to represent another in dealing with the third persons and the principal: means a person for whom such act is done or who is so represented.
- b) **Who may employ an agent:** According to section 183 of the Indian Contract Act, 1872, "any person who has attained majority according to the law to which he is subject, and who is of sound mind, may employ an agent." Thus, a minor or a person of unsound mind cannot appoint an agent.

191. Mr. Navin owns a big car and has leased his car to Mrs. Susie. The lease agreement is terminable on three months' notice. Mr. Bhalla, not being authorised by Mr. Navin, demands on behalf of Mr. Navin, the delivery of the car and gives a notice of termination of lease agreement to Mrs. Susie who was in possession of the car at that time. Examine whether Mr. Navin can ratify the notice sent by Mr. Bhalla Give your answer as per the provisions of the Contract Act, 1872.

Answer:

According to section 200 of the Indian Contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

Thus, in the instant case the notice cannot be ratified by Navin, so as to be binding on Susie.

192. What is the meaning of 'Agency by estoppel'? What are the essential conditions for creation of an agency by estoppel? Give your answer with respect to the provisions the Indian Contract Act, 1872.

Answer:

An agency by estoppel is based on the principle of estoppel. The principle of estoppel lays down that "when one person by declaration (representation), act or omission has intentionally caused or permitted another person to believe a thing to be true and to get upon such belief, he shall not be allowed to deny his previous statement or he shall be stopped to deny his previous statement or conduct".

The agency by Estoppel is provided under section 237 of the Indian Contract Act. Section 237 states: "When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority".

According to section 237 of the Contract Act, an agency by estoppel may be created when following essentials are fulfilled:

- a) the principal must have made a representation;
- b) the representation may be express or implied;
- c) The representation must state that the agent has an authority to do certain act although really he has no authority;
- d) The principal must have induced the third person by such representation; and
- e) The third person must have believed the representation and made the contract on the belief of such representation.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1872



193. What is agent's authority in case of an emergency. What are the essential conditions to be satisfied to constitute a valid emergency. Give your answer as per the provisions of the Indian Contract Act, 1872.

Answer:

An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

To constitute a valid agency in an emergency, following conditions must be satisfied.

- (i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
- (ii) There should have been actual and definite commercial necessity for the agent to act promptly.
- (iii) The agent should have acted bonafide and for the benefit of the principal.
- (iv) The agent should have adopted the most reasonable and practicable course under circumstances, and
- (v) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

194. Mr. Bhalla instructs Aman, a merchant, to buy a ship for him. Aman employs a ship surveyor of good reputation to choose a ship for Mr. Bhalla. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bhalla holds Aman responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Aman is responsible to Mr. Bhalla.

Answer:

According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Aman is not, but the surveyor is, responsible to Mr. Bhalla.

195. Pankaj appoints Shruti as his agent to sell his estate. Shruti, on looking over the estate before selling it, finds the existence of a good quality Granite-Mine on the estate, which is unknown to Pankaj. Shruti buys the estate herself after informing Pankaj that she (Shruti) wishes to buy the estate for herself but conceals the existence of Granite-Mine. Pankaj allows Shruti to buy the estate, in ignorance of the existence of Mine. State giving reasons in brief the rights of Pankaj, the principal, against Shruti, the agent. Give your answer as per the provisions of the Contract Act, 1872. What would be your answer if Shruti had informed Pankaj about the existence of Mine before she purchased the estate, but after two months, she sold the estate at a profit of Rs. 10 lac?

Answer:

Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent. The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction.

On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction.

Hence in the first instance, though Pankaj had given his consent to Shruti permitting the latter to act on his own account in the business of agency, Pankaj may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.

196. Akash is a famous manufacturer of leather goods. He appoints Prashant as his agent. Prashant is entrusted with the work of recovering money from various traders to whom Akash sells leather goods. Prashant is paid a monthly remuneration of Rs. 15,000. Prashant during a particular month recovers Rs. 40,000 from traders on account of Akash. Prashant gives back Rs. 25,000 to Akash, after deducting his salary. Examine with reference to relevant provisions of the Indian Contract Act, 1872, whether act of Prashant is valid.

Answer:

The given problem is based on the provision related to 'agency coupled with interest'. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the given instance, Akash appointed Prashant as his agent to recover money from various traders to whom Akash sold his leather goods, on a monthly remuneration of Rs. 15,000. Prashant during a month recovers Rs. 40,000 from traders on account of Akash. Prashant after deducting his salary give the rest amount to Akash.

In the said case, interest was created in favour of Prashant and the said agency is not revocable, therefore, the act of Prashant is valid.

QUESTION BANK

CA AKASH AGARWAL

ICA, 1672

OBJECTIVES

Q1. Multiple Choice Question

1. Acceptance to be a valid must
 - a) Be absolute
 - b) Be unqualified
 - c) Both be absolute & unqualified
 - d) Be conditional
2. A proposal can be accepted
 - a) By notice of acceptance
 - b) By performance of condition of proposal
 - c) By acceptance of consideration for a reciprocal promise
 - d) All of the above
3. Competency to contract relates to
 - a) Age of parties
 - b) Soundness of mind of the parties
 - c) Both age and soundness of mind
 - d) Intelligence of the parties
4. If only a part of the consideration or object is unlawful, the contract under Section 24 shall be:
 - a) Valid
 - b) Voidable
 - c) Void
 - d) Illegal
5. When the consent is caused by undue influence, the contract under Section 19A is:
 - a) Valid
 - b) Void
 - c) Voidable
 - d) Illegal
6. Cash is withdrawn by a customer of a bank from the automatic teller machine is an example of:
 - a) Express Contract
 - b) Void Contract
 - c) Tacit Contract
 - d) Illegal Contract
7. In social agreements usual presumption is:
 - a) That parties do not intend to create social relations.
 - b) That parties intend to perform them.
 - c) That parties do not intend to make legal and social relations.
 - d) That the parties do not intend to create legal relations between them.
8. Which of these are sources of Indian Contract Act?
 - a) Law framed by East India Company
 - b) American Mercantile Law
 - c) Vedas and Purans
 - d) English Mercantile Laws
9. If the Act has been done before any promise is made, it is called:
 - a) Present consideration
 - b) Past consideration
 - c) Future consideration
 - d) Executory consideration
10. A goods displayed in a shop with a price tag is a
 - a) Offer
 - b) Invitation to offer
 - c) Counter offer
 - d) None of the above
11. A contract is a combination of:
 - a) Agreement and free consent
 - b) Agreement and consideration
 - c) Agreement and enforceability
 - d) Agreement and competence of parties
12. Which of the following is an invitation for offer?
 - a) A tender to supply goods at a certain time
 - b) A request for a loan
 - c) Bids in an auction sale
 - d) A catalogue of goods for sale



QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



13. A invites B for his son's wedding. B accepts the invitation. In this case, there is an agreement but no contract since:

- a) There is no consideration.
- b) There is no intention to create legal relationship.
- c) There is no written document.
- d) There is no formal acceptance of the offer.

14. A proposal may be revoked at any time before:

- a) The communication of acceptance
- b) The payment of consideration
- c) Signing the agreement
- d) Execution of the proposal

15. If part of contract is illegal, then the whole contract will be

- a) Voidable
- b) Void
- c) Legal
- d) Illegal

16. Which of the following agreement is wagering agreement under the Indian Contract Act, 1872

- a) Crossword competition involving application of skill and knowledge.
- b) Contract of Insurance.
- c) A promise to pay B ₹ 1,000 if it rains on Monday.
- d) A agrees to pay B 1,000 if two straight lines should enclose a space.

17. In which one of the following cases an agreement without consideration is void?

- a) Gift actually made
- b) Sale of property
- c) Creation of agency
- d) Charitable subscription

18. Ankit agrees to pay Bina 1,500 if it rains today, otherwise Bina pays Ankit 2,000. This is a

- a) Gambling
- b) Wagering agreement
- c) Valid agreement
- d) Speculation

19. The main feature of e-contract is:

- a) Cost and acceptability
- b) Purity and clarity
- c) Speed, accurate and reliable
- d) Perfection and attractive

20. Anu threatens to kidnap Binu's daughter if she does not sell her house worth *90 Lakh to her for 20 Lakh. This Contract is void due to

- a) Inadequacy of Consideration
- b) Absence of Free Consent
- c) Incompetence of Parties
- d) None of the above

21. A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of:

- a) Listening it
- b) Hearing it
- c) Understanding it
- d) Interpreting it

22. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of:

- a) Unsound mind
- b) Sound mind
- c) Fresh mind
- d) Cool mind

23. A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as:

- a) Mistake
- b) Fraud
- c) Misrepresentation
- d) Coercion

QUESTION BANK

CA AKASH AGARWAL

ICA, 1872

24. In which of the following cases, the claim of Quantum Meruit arise:

- a) When there is no breach of contract
- b) When a contract is discovered to be valid
- c) Where something has been done non-gratuitously
- d) Where the contract is divisible

25. A party who does not suffer any loss in case of breach of contract is entitled to:

- a) Statutory damages
- b) Liquidated damages
- c) Exemplary damages
- d) Nominal damages

26. Which one of the following is not the discharge by operation of law?

- a) By merger
- b) By insolvency
- c) By breach of contract
- d) By the unauthorized alteration of items of a written document

27. Which of the following is a method of discharge from liability?

- a) By endorsement
- b) By promising
- c) By cancellation
- d) By registration

28. Anchal purchased a motor car from Kamal who had no title to it. Anchal used the motor car for several months. True owner spotted the motor car and demanded it from Anchal. In such case:

- a) Anchal is bound to hand-over the motor car to true owner
- b) Anchal is not bound to return the motor car to true owner as he has paid in full settlement to Kamal.
- c) Anchal shall advise true owner to approach Kamal.
- d) True owner has no right to claim either from Anchal or from Kamal.

29. The term 'sub-agent' in the business of agency is defined as a person employed by, and acting under the control of the:

- a) Principal
- b) Original agent
- c) Lawyer
- d) Third person

30. The liability of surety arises only when the principal debtor fails to pay the debt to:

- a) Solicitor
- b) Creditor
- c) Visitor
- d) Collector

Q2. True or False

- 1. A guarantee obtained by misrepresentation or concealment is voidable.
- 2. The surety stands discharged by death.
- 3. Under a contract of guarantee principal debtor is not liable, guarantor is not liable.
- 4. Silence on the part of the offeree amounts to acceptance.
- 5. An agreement to which the consent of the promise is freely given is not void.
- 6. Creditor is a person to whom the guarantee is given.
- 7. Liability of a surety is conditional on default.
- 8. A promise in return for promise means Cross promises.
- 9. All agreements are contracts but all contracts are not agreements.
- 10. An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others is a void contract.
- 11. An agreement which is impossible is void.
- 12. A convict cannot enter into a contract while he is undergoing an imprisonment.
- 13. Silence on part of the offeree amounts to acceptance.
- 14. Gratuitous bailment continues even after the death of either of the bailor or bailee.
- 15. In a contract of guarantee two parties are necessary.
- 16. A pledge is a bailment of movable property by way of security.

Q3. Fill in the Blanks

- 1. Agreements enforceable by law are called ____.
- 2. Agreements without consideration are ____.
- 3. Agreements in restraint of marriage is ____.
- 4. Section 2 (d) defines ____.
- 5. Section 5 provides that a proposal may be revoked at any time ____ the communication of acceptance.
- 6. Agreements of wagers are ____.
- 7. When the person to whom the ____ is made signifies his assent thereto, proposal is said to have been accepted.
- 8. Proposal is other called as ____.
- 9. The person delivering the goods for bailment is called the ____.

QUESTION BANK



CA AKASH AGARWAL

ICA, 1072



10. No consideration is necessary to create ____.
11. The maximum number of parties in a contract may be ____.
12. Acceptance may be either general or ____.
13. Misrepresentation must relate to some fact which is material to the ____.
14. When the consent is caused by ____ the agreement is voidable at the option of the party whose consent was so caused.
15. A representation when wrongly made either innocently or unintentionally is ____.
16. Two or more persons are said to consent when they agree upon the same thing in the same ____.
17. Remission ____ means due under the contract, of a lesser performance than what is actually.
18. The liability of surety arises only when the principal debtor fails to pay the debt to the ____.
19. The person to whom the guarantee is given is called ____.

21. C		
22. B		
23. B		
24. D		
25. D		
26. C		
27. C		
28. A		
29. B		
30. B		

ANSWERS

MCQ	TRUE OR FALSE	FTB
1. C	1. FALSE	1. Contracts
2. D	2. FALSE	2. Void
3. C	3. TRUE	3. Void
4. C	4. FALSE	4. Consideration
5. C	5. TRUE	5. Before
6. C	6. TRUE	6. Void
7. D	7. TRUE	7. Offer/proposal
8. D	8. FALSE	8. Offer
9. B	9. FALSE	9. Bailor
10. B	10. FALSE	10. Agency
11. C	11. TRUE	11. INFINITE
12. D	12. TRUE	12. SPECIAL
13. B	13. FALSE	13. CONTRACT
14. A	14. FALSE	14. FRAUD
15. B	15. FALSE	15. MISREPRESENTATION
16. C	16. TRUE	16. SENSE
17. B		17. ACCEPTANCE
18. B		18. CREDITOR
19. C		19. CREDITOR
20. B		



SALE OF GOODS ACT, 1930

PREVIOUS YEAR QUESTIONS & MOP & RTP

RTP Dec. 2018

Q1. Rules for Ascertaining Passing of Property. Discuss

Answer:

Rules for Ascertaining Passing of Property:

The provisions are discussed hereunder:

- Goods must be ascertained (section 18): As per section 18 in a contract for sale of unascertained goods, the property in the goods does not pass to the buyer unless and until the goods are ascertained.
- Intention of the parties for such transfer (section 19): As per section 19(2), in a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. The intention of the parties is ascertained from the terms of the contract, the conduct of the parties and the circumstances of the case.

When intention of the parties cannot be ascertained, rules contained in section 20-24 are required to be applied for ascertaining the time of transfer of property which is discussed hereunder:

1. Specific goods (Sections 20 to 22)

- Specific goods in a deliverable state (section 20): In an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. (Sec 20). Goods are said to be in deliverable state when they are in such a state that the buyer would under the contract be bound to take delivery thereof.
- Specific goods to be put into a deliverable state (Sec. 21): Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof (sec 21).
- Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (section 22): If there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with

reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof. (sec 22).

2. Unascertained goods (Sec 23)

- Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.
- Delivery to carrier: Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have appropriated the goods for the purpose of the contract.

3. Goods on approval or on sale or return

- In order to push up the sales generally there is a practice of sending goods to the customer with the clear cut understanding that he has option to approve or return the goods within a given period. This type of sales is known as —approval or sale or return.
- In such cases the transaction does not culminate into sale until the goods are approved by the customer and the property in goods still remains with the seller.
- When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer —
 - When he signifies his approval or acceptance to the seller
 - When he does any other act adopting the transaction.
 - If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

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CA AKASH AGARWAL

SOGA, 1930



[PP, Dec. 2016, PP, Dec. 2017]

[4 & 5 Marks]

Q2. What are the consequences of 'destruction of goods' under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.

Answer:

Section 7 & Section 8 of Sale of Goods Act, 1930 are applicable only in case of specific goods and not unascertained/generic goods. It may further be noted that if the seller was aware of the destruction of goods and still enters into a contract, then he is stopped from disputing the contract.

In such case the buyer can sue him for breach of contractual obligations and claim damages.

Goods perishing before making contract.	Goods perishing before sale but after agreement to sell.
If <u>without the seller's knowledge</u> , at time of <u>making contract</u> the <u>goods</u> in contract <u>perishes or gets damaged</u> leaving them not matching with description, <u>the contract becomes void</u> .	If <u>without any fault of seller or buyer</u> , the <u>goods</u> in contract <u>perishes or gets damaged</u> leaving them not matching with description before passing of risk to buyer, <u>the agreement becomes void</u> .

PP, Dec. 2023, MTP, Dec. 2018, RTP June 2018]

[7 Marks]

Q3. How would you Differentiate between Contract of sale and Agreement to sell?

Answer:

Difference between Contract of sale and Agreement to sell are as under:

	Contract of sale	Agreement to sell
Transfer of property	The <u>property</u> of the goods <u>passes from the buyer to the seller</u> .	The <u>transfer of property</u> takes place <u>at a future time</u> or subject to certain conditions to be fulfilled.
Type of contract	It is an <u>executed contract</u> .	It is an <u>executory contract</u> .
Type of goods	<u>Sales takes place only for existing and specific goods</u> .	<u>Future and contingent goods</u> .
Risk of loss	If the <u>goods are destroyed</u> , the <u>loss falls on the buyer</u> despite the goods are in the possession of the seller.	If the <u>goods are destroyed</u> , the <u>loss falls on the seller</u> despite the goods are in the possession of the buyer
Breach of contract	The <u>seller can sue the buyer for price and for damages</u> in case of breach by the buyer	The <u>seller can sue for damages only</u> in case of breach by the buyer

General and particular property	It gives <u>buyer to enjoy the goods</u> as <u>against the world at large</u> including the seller	It gives a <u>right to the buyer against the seller to sue for damages</u>
Insolvency of the buyer	In the absence of lien over the goods the <u>seller is to return the goods to the official receiver</u> or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The <u>seller is not bound to part with the goods until the price is paid</u> to him.
Insolvency of the seller	The <u>buyer, becoming the owner</u> , is <u>entitled to recover the same from the Official receiver or assignee</u>	The <u>buyer cannot claim the goods but the dividend declared by the Official receiver or assignee</u> .

[PP, Dec. 2013]

[4 Marks]

Q4. Write short note on: Essential of a Contract of sale.

Answer:

- It must involve two parties. The goods need to transfer from one entity to another. The goods cannot be bought from one's own self and be called a contract.
- The transfer must involve the transfer of title to the goods or the transfer of ownership of the goods.
- A contract of sale is not complete unless there is a certain subject matter which is to be transferred in lieu of a specific amount of consideration. As per Section 2(7) of the Act the subject matter is the goods. The subject matter of the contract is the goods which can be either existing goods, owned or possessed by the seller, or future goods.
- The consideration in such contracts needs to be a designated amount payable in money and not in exchange of other goods of similar value or otherwise. A contract of sale may be absolute or conditional.
- All essential elements of a valid contract must be present in a contract of sale.

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CA AKASH AGARWAL

SOGA, 1930



[PP. Dec. 2013]

[3 Marks]

Q5. Define Sales (Sale of Goods Act).

Answer.

As per Section 4 of Sale of Goods Act, 1930, a contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in the goods to the buyer for a price. It is not conditional.

The ownership of property transfers immediately to the buyer.

It creates right in rem i.e. right against whole world.

The contract may provide for the immediate delivery of the goods or immediate payment of the price or both or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

Subject to provisions of any laws for the time being in forces, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

[PP. June 2014]

[2 MARKS]

Q. 6. Explain "Agreement to sell at valuation" under Sale of Goods Act, 1930.

Answer.

As per Section 10 of Sale of Goods Act, 1930:

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided.

If the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

[PP. Dec. 2013, MTP June 2018, Dec. 2019 & Dec. 2022]

[6 Marks]

Q7. A non-owner can convey a better title to the bona fide purchaser of goods for value in certain cases. List out those cases.

[PP Dec. 2013]

Or

Transfer of title by non-owners State the exceptions to it.

[MTP June 2018]

Or

Discuss the provisions with respect to transfer of title by non-owner of goods. State the exceptions to this doctrine which seeks to protect the interest of bona fide buyers.

(MTP DEC 2022) & (MTP DEC 2019)

Answer:

➤ Nemo dat quod non habet- "No one gives what they do not have". It is a legal rule, sometimes called the nemo dat rule which states that any purchase of a possession from someone who has no ownership right to it also denies the purchaser any ownership title.

➤ In short non-owner cannot make valid transfer in goods and if he sells them the buyer (even if he is honest) who purchases those goods also doesn't get valid title as the seller also didn't have the same. In order to protect bona fide buyers who purchased goods in good faith for value certain exceptions to this doctrine were made as follows:

Sale by mercantile agent (Section 27)	When a <u>mercantile agent in ordinary course of business, sells any goods in his possession or of document of title to goods</u> with consent of owner <u>shall be as valid as he was expressly authorized by owner provided buyer buys in good faith</u> and has not noticed at time of contract that seller has no authority to sell.
Sale by one of joint owners (Section 28)	With <u>permission of co-owners</u> , if <u>one of the joint owners</u> has the possession of goods, then on <u>selling these goods</u> , the <u>property in goods transfers to buyer if buyer has purchased in good faith without having notice at time contract that seller has no authority to sell.</u> The <u>property in goods doesn't transfer</u> in case of <u>unascertained goods, until the goods are ascertained.</u>
Sale by person in possession under voidable contract (Section 29)	When the <u>seller of goods has obtained possession</u> thereof under a <u>contract voidable</u> under Section 19 or Section 19A of the Indian Contract Act, 1872, but the <u>contract has not rescinded</u> at the time of the sale, the <u>buyer acquires a good title to the goods, provided he buys them in good faith</u> and without notice of the seller's defect of title

QUESTION BANK

CA AKASH AGARWAL

SOGA, 1930

Seller or buyer in possession after sale (Section 30)	1. Where a person, <u>having sold goods</u>, continues or is in possession of the goods or of the documents of title to the goods, the <u>delivery or transfer of goods or document of title</u> by that person or by his mercantile agent <u>under any sale, pledge or other disposition thereof to any other person receiving the same in good faith</u> and without notice of the previous sale shall have the <u>same effect</u> as if <u>the transferor were expressly authorized by the owner</u> of the goods to make the same. 2. Where a person <u>who buys or agrees to buy goods</u>, obtains <u>with the consent of the seller, possession of the goods</u> or the documents of title to the goods, the <u>delivery or transfer of goods or document of title</u> by that buyer or by his mercantile agent <u>under any sale, pledge or other disposition thereof</u> to any other person receiving the <u>same in good faith</u> and without notice of any lien or other right of the original seller in respect of the goods, shall have <u>effect as if such lien or right did not exist</u>.
Sale by estoppel (Section 27)	Where the <u>owner by his conduct or omission, leads the buyer to believe that the seller has authority to sell</u> , he is stopped from denying the fact afterwards. The <u>buyer thus gets a better title than the seller</u> .
Sale by finder of goods u/s 169 of Indian Contract Act, 1872	If the <u>true owner is not found</u> or true owner <u>refuses to pay lawful charges of finder of lost goods</u> , then the <u>finder of goods can sell them if goods are of perishable nature or when lawful charges of finder amounts to 2/3rd of its value</u> .
Sale by Pawnee u/s 176. Contract Act, 1872	A <u>Pawnee of goods has the right to sell the goods pawned</u> .
Sale by official receiver or assignee	In case of <u>insolvency of any individual his official receiver or liquidator of a company can sell the goods and buyer thereof gets good title to it</u> .
Execution of Sale Under	Under <u>order 21</u> of the Civil Procedure Code officer of court <u>may sell goods and convey good title to the buyer in spite of the fact they are not the true owner of the goods</u> .

[PP. Dec. 2017, MQP. Dec. 2023]

[8 & 7 Marks]

Q8. What do you understand by "Caveat-Emptor" under the Sale of Goods Act, 1930? What are the exceptions to this rule?

Answer:

- "Caveat emptor" means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly.
 - If the goods turn out to be defective or do not suit his purpose or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody except for him.
 - As per Section 16 of Sale of Goods Act, 1930, subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.
- Exceptions to this Rule: The rule of caveat emptor does not apply in the following cases:**
- **Fitness for buyer's purpose:** Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose.
 - **Sale under a patent or trade name:** In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose.
 - **Merchantable quality:** Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed.
 - **Usage of trade:** An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
 - **Consent by fraud:** Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



[PP. July, 2023]

[8 Marks]

Q9. Explain the different types of implied condition.

Answer:

Condition as to title Section 14	"One can sell what one owns" stands apt for condition as to title unless circumstances show another intention. The <u>seller has the right to sell goods on which he has title</u> , lacking which may make the buyer reject the goods and recover the price back
Condition as to description Section 15	If you contract to sell peas, you cannot oblige party to take beans. The <u>goods should correspond with the description</u> or else the buyer may reject them or accept them & claim damages. There are certain cases where buyer has not seen the goods and relies on seller.
Condition as to sample Section 17	Where <u>goods are sold by sample</u> , there is an implied condition that the <u>bulk of the goods should correspond with the sample in quality</u> , the buyer shall have a reasonable opportunity of comparing the bulk with the sample and the goods shall be free from latent (hidden) defects.
Condition as to description and sample Section 15	The <u>goods should correspond to both sample and description</u> . The buyer is entitled to reject the goods if any one element is missing.
Condition as to fitness or quality Section 16(1)	There is no <u>implied condition as to quality, or fitness of the article</u> for any particular purpose as per maxim Caveat Emptor and so the seller cannot be held responsible. 1. If the <u>buyer has made known the purpose to the seller</u> Or 2. He is <u>relying on skills & judgment</u> of seller 3. Or where his <u>consent was obtained by fraud or misrepresentation</u> , then condition to quality and fitness, applies.
Conditions as to merchantability as per Section 16(2)	Merchantability means " <u>acceptability in the market</u> ". If goods merchantability are not acceptable in market then they are not merchantable.
Condition as to wholesomeness	This condition is applicable only in case of eatables and provisions. wholesomeness The goods must comply with description and wholesomeness. They <u>should be defect free and fit</u> for human consumption.

[MQP. June, 2023]

[8 Marks]

Q10. How can you apply the implied conditions in a contract of sale by sample. Discuss your answer with the appropriate examples and reference to the law.

Answer:

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. In the case of a contract for sale by sample there is an implied condition –

- That the bulk shall correspond with the sample in quality.
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

Example: David sold Indian variant of sunflower seeds at his shop and sold it in bulk for who ever wanted to buy the same. Tatiana tested the sample of the seeds at David's shop and decided to order it in bulk. However when David sent the seeds in bulk, Tatiana decided to sow the seeds. Months later Tatiana discovered that the seeds were of Swedish variant and not the Indian variant that she has requested for. Tatiana now wanted full refund for the seeds that were delivered to her by David. David is now bound to either reimburse her the whole amount or give her the quantity of Swedish variant that she requested for.

In case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

[MQP. June, 2023]

[8 Marks]

Q11. What is an Implied Warranty and state the various types of Implied Warranties.

Answer:

Implied Warranties: It is a warranty which the law implies into the contract of sale. In other words, it is the stipulation which has not been included in the contract of sale in express words. But the law presumes that the parties have incorporated it into their contract. It will be interesting to know that implied warranties are read into every contract of sale unless they are expressly excluded by the express agreement of the parties. These may also be excluded by the course of dealings between the parties or by usage of trade (Section 62).

The examination of Sections 14 and 16 of the Sale of Goods Act, 1930 discloses the following implied warranties:

- a) **Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



- b) **Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
- c) **Warranty as to quality or fitness by usage of trade [Section 16(3)]:** An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade. Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is 'let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.
- d) **Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

[P.P. June, 2017]

[6 Marks]

Q12. Under which circumstances can an unpaid seller exercise his right of lien? Distinguish between right of lien and right of stoppage of goods in transit, under the Sale of Goods Act, 1930.

Answer:

As per Section 47 of Sale of Goods Act, 1930.

Lien is a right to retain possession of goods until payment of price.

In following case this right can be exercised:

- Where the goods have been sold without any stipulation as to credit.
- Where the goods have been sold on credit, but the period of credit has expired.
- Where the buyer becomes insolvent.

Conditions for the exercise of lien:

- The ownership must have passed to the buyer.
- The goods must be in the possession of the seller.
- The whole or part of the price must remain unpaid

Right of Lien	Right of Stoppage in Transit
1. It is a right to <u>retain possession.</u>	1. It is a right to <u>regain possession</u>
2. Seller should be in <u>possession of goods.</u>	2. Seller should <u>have parted with the possession</u> ; the possession should be with a carrier and buyer has not acquired the possession.
3. It can be exercised <u>even when the buyer is not insolvent.</u>	3. It can be exercised <u>only if the buyer is insolvent.</u>
4. The <u>end of the right of lien is the starting point of the stoppage in transit.</u>	4. Right of stoppage in transit <u>begins when the right of lien ends.</u>

[P.P. Dec. 2021, July 2023, & MTP June 2019]

[9 Marks]

Q13. Discuss the remedies available to buyer against the seller for breach of contract.

Or

Mention the rights of the buyer when there is a breach of contract by the seller.

Answer:

A buyer also has certain remedies against the seller who commits a breach which are as follows:

- **Suit for Damages for Non-Delivery [Section 57]:**
When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.
- **Suit for price:**
Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid by suing the seller.
- **Suit for specific performance [Section 58]:**
When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods.
- **Suit for Breach of Warranty [Section 59]:**
Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods.
The buyer may:
 - Set up the breach of warranty in extinction or diminution of the price payable by him, or
 - Sue the seller for damages for breach of warranty.
- **Repudiation of contract before the due date [Section 60]:**
Where either party to a contract of sale repudiates the contract before the date of delivery and the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
- **Suit for interest:**
The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed.



EXTRA THEORY QUESTIONS

[Study Material]

Q14. State the rights of the unpaid seller against the buyer.

Answer:

Rights of unpaid seller against the buyer: An unpaid seller can enforce certain rights against the goods as well as against the buyer personally. Rights of unpaid seller against the buyer are otherwise known as seller's remedies for breach of contract of sale. The rights of the seller against the buyer personally are called rights in personam and are in addition to his rights against the goods.

The right against the buyer are as follows:

1. Suit for price (Section 55):

a. Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuse to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. (Section 55(1))

b. Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. (Section 55(2))

2. Suit for damages for non-acceptance (Section 56):

Where the buyer wrongfully neglects or refuse to accept and pay the goods, the seller may sue him for damages for non-acceptance. As regards measure of damages, section 73 of the Indian contract act, 1872 applies.

3. Repudiation of contract before due date (Section 60): Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach contract'.

4. Suit for interest [Section 61]: Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest on the price when it becomes due from such day as he may notify to the buyer.

In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.

Q15. What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?

Answer:

Rights of an unpaid seller against the goods: As per the provisions of Section 46 of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

a) a lien on the goods for the price while he is in possession of them;

b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;

c) a right of re-sale as limited by this Act. [Sub-section (1)] Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [Sub-section (2)]

These rights can be exercised by the unpaid seller in the following circumstances:

1) Right of lien (Section 47): According to sub-section (1), the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:-

- a) where the goods have been sold without any stipulation as to credit;
- b) where the goods have been sold on credit, but the term of credit has expired;
- c) where the buyer becomes insolvent.

2) Right of stoppage in transit (Section 50): When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.

3) Right to re-sell the goods (Section 54): The unpaid seller can exercise the right to re-sell the goods under the following conditions:

- a) Where the goods are of a perishable nature
- b) Where he gives notice to the buyer of his intention to re-sell the goods
- c) Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods
- d) A re-sale by the seller where a right of re-sale is expressly reserved in a contract of sale
- e) Where the property in goods has not passed to the buyer

Q.16 Define 'unpaid seller'

Answer:

According to Section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when -

- (a) The whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

The term 'seller' here includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price [Section 45(2)].

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



Example 1: X sold certain goods to Y for Rs. 50,000. Y paid Rs. 40,000 but fails to pay the balance. X is an unpaid seller.

Example 2: P sold some goods to R for Rs. 60,000 and received a cheque for a full price. On presentment, the cheque was dishonoured by the bank. P is an unpaid seller.

Q17. Explain the meaning of right of stoppage in transit.

Answer:

Meaning of right of stoppage in transit: The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain the possession and to retain them till the full price is paid.

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right of regain the goods back, or not to deliver the goods to the buyer.

This right is the extension of the right of lien because it entitles the seller to regain possession even when the seller has parted with the possession of the goods.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

- The seller must be unpaid.
- He must have parted with the possession of goods.
- The goods are in transit.
- The buyer has become insolvent.
- The right is subject to provisions of the Act. (Section 50)

Example: B at Delhi. orders goods of A, at Mumbai. A consigns and forwards the goods to B. On arrival at Delhi, they are taken to B's warehouse and left there. B refuses to take these goods and stop payment. The goods are in transit and the unpaid seller can take them back.

Q18. How does stoppage in transit effected?

Answer:

How stoppage in transit is effected: There are two modes of stoppage in transit- Stoppage in transit:

- By taking actual possession of goods.
- By giving notice to the carrier not to deliver the goods.

Where the notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such redelivery shall be borne by the seller.

[Study Material]

Q19. State the circumstances when the unpaid seller has the right of resale.

Answer:

Right of Re-Sale (Section 54): Where the unpaid seller has retained the possession of the goods in exercise of his right of unpaid seller's lien, or where he has resumed (regained) the possession of the goods from the carrier, in the event of such buyer being declared insolvent, such unpaid seller can resell the goods involved. in the following circumstances:

(a) Where the goods so sold are perishable in nature, such unpaid seller can resell the goods involved, without giving any notice to the buyer. But, here, the term 'perishable' also includes the goods which are commercially perishable in nature, i.e. which may deteriorate so as to make them non-merchantable.

(b) However, where the goods so sold are not perishable in nature, such unpaid seller is required to ask the buyer to pay or to tender the price of the goods so sold to him, within a reasonable time, and only when the buyer fails to do so, such unpaid seller can resell the goods involved, and not otherwise.

(c) Further, such right is also available to him in the cases where, under the contract of the sale of goods, he has expressly retained the right of resale of the goods, in the event of the buyer making a default. Thus, the original contract gets cancelled, but the unpaid seller still retains his right to claim damages from the original buyer for breach of the contract [Section 54 (4)]. But then, the unpaid seller must exercise his right of resale of the goods within a reasonable time, which will depend upon the facts of each case.

Q. 20. Condition can be treated as warranty under a contract of sale.

Or

Under what circumstances breach of condition is treated as breach of warranty under the provisions of The Sale of Goods Act, 1930?

Answer:

As per Section 13 of Sale of Goods, 1930, where a contract of sale is-

Subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated;

Not severable & the buyer has accepted the goods or part thereof, the breach of condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of contract, express or implied to that effect.

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CA AKASH AGARWAL

SOGA, 1930

Nothing in this shall affect the case of any condition or warranty fulfilment of which is excused by law or by reason of impossibility or otherwise.

Q21. Write a short note on auction sale.

Answer:

Section 64 provides that in the case of a sale by auction-

- where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale;
- the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and until such announcement is made, any bidder may retract its bid;
- a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;
- where the sale is not notified to the subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;
- the sale may be notified to be subject to a reserved or set up price;
- if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Section 64 does not deal with the question of passing of the property at auction sale but merely deals with completion of the contract of sale which takes place at the fall of the hammer or at the announcement of the close of the sale in other customary manner by the auctioneer.

In other words, all that happens at the fall of the hammer or at the announcement of the closure of the sale in other customary manner is that a contract of sale comes into existence and parties get into the relationship of a promisor and a promisee in an executory contract.

Q22. Define stipulation under the Sale of Goods Act, 1930.

Answer:

1. At the time of selling the goods, a seller usually makes certain statements or representations with a view to induce the intending buyer to purchase the goods. Such representations are generally about the nature and quality of goods, and about their fitness for buyer's purpose.
2. A representation which forms a part of the contract of sale and affects the contract, is called a stipulation. However, every stipulation is not of equal importance.

Q23. Explain the meaning of condition and warranty. Give an example.

Answer:

Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]

"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated". [Sub-section (2)]

"A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated". [Sub-section (3)]

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. [Sub-section (4)]

Example: Raj consults Suraj, a motor-car dealer for a car suitable for touring purposes to promote the sale of his product. Suraj suggests "Mayur" and Raj accordingly buys it from Suraj. The car turns out to be unfit for touring purposes. Here the term that the 'car should be suitable for touring purposes' is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Raj purchases the car. Raj is therefore entitled to reject the car and have refund of the price.

Let us assume Raj buys a new Mayur car from the show room and the car is guaranteed against any manufacturing defect under normal usage for a period of one year from the date of original purchase and in the event of any manufacturing defect there is a warranty for replacement of defective part if it cannot be properly repaired. After six months Raj finds that the horn of the car is not working, here in this case he cannot terminate the contract. The manufacturer can either get it repaired or replaced it with a new horn. Raj gets a right to claim for damages, if any, suffered by him but not the right of repudiation.

[Study Material]

Q24. Explain the distinctions between condition and warranty.

Answer:

Difference between conditions and warranties: The following are important differences between conditions and warranties.

Point of difference	Condition	Warranty
Meaning	A condition is essential to the main purpose of the contract.	It is only collateral to the main purpose of the contract.
Right in case of breach	The aggrieved party can repudiate the contract or claim damages or both in the case of breach of condition.	The aggrieved party can claim only damages in case of breach of warranty.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



Conversion of stipulations

A breach of condition may be treated as a breach of warranty.

A breach of warranty cannot be treated as a breach of condition.

Q25. Describe the situations in which a breach of a condition is treated as a breach of warranty.

Answer:

Section 13 species cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim for damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation.
- Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract.

Example: A agrees to supply BIO bags of first quality sugar @ Rs. 625 per bag but supplies only second quality sugar, the price of which is Rs. 600 per bag. There is a breach of condition and the buyer can reject the goods. But if the buyer so elects, he may treat it as a breach of warranty, accept the second quality sugar and claim damages @ Rs. 25 per bag.

3. Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.

4. Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Q26. Write short notes on Exceptions to implied condition as to quality or fitness.

Answer:

- That in the case of a contract for sale of a specified article under the patent or other trade name, there is no implied condition to its fitness nor any particular purpose.
- That where the buyer has examined the Goods, there shall be no implied condition as regards defects which Such examination ought to have revealed.
- That if the buyer has examined Goods, there shall be no implied condition.
- That the goods shall be merchantable quality.

Q27. Discuss briefly various implied warranties.

Answer:

The examination of Sections 14 and 16 of the Sale of Goods Act, 1930 discloses the following implied warranties:

1. Warranty as to undisturbed possession [Section 14(b)]: An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

2. Warranty as to non-existence of Encumbrances [Section 14(c)]: An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
Example: A pledges his car with C for a loan of Rs.15,000 and promises him to give its possession the next day. A, then sells the car immediately to B, who purchased it on good faith, without knowing the fact. B, may either ask A to clear the loan or himself may pay the money and then, le a suit against A for recovery of the money with interest.

3. Warranty as to quality or fitness by usage of trade [Section 16(3)]: An implied warranty as to quality or fitness for a particular purpose may be annexed or attached by the usage of trade. Regarding implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied, the rule is let the buyer beware' i.e., the seller is under no duty to reveal unflattering truths about the goods sold, but this rule has certain exceptions.

4. Disclosure of dangerous nature of goods: Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages

Q28. Discuss briefly implied condition as to merchantable quality

Answer:

Though it is rather difficult to exactly define the term 'merchantable quality', the definition which gives the closest description of the term is provided in the case titled *Gardener Vs. Grey* [(1814) 4 Comp. 144] which defines it as an article which 'must be saleable in the market under the denomination mentioned'. Alternatively speaking, the quality of the article must be such that a reasonable person would accept the article as the performance of a promise.

Examples:

1. X had bought some black yam from Y. The yarn was found to have been damaged by the white ants. It was held in the case that the condition in regard to the merchantability was broken.
2. In a similar case titled *Jones Vs. Just* [(1867) L.R. 3. Q.B. 192], a contract of sale of Manila hemp was entered into. The hemp supplied was, of course, Manila hemp. But then, it was so much damaged by the sea water that no one would have accepted it in the market as Manila hemp. It was held, that the condition in regard to the merchantability was broken in this case.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



[Study Material]

Q29. Explain the doctrine/principle of caveat emptor

Answer:

The principle of 'Caveat Emptor' is the fundamental principle of law of sale of goods. The term 'caveat emptor means in English as let the buyer be ware' or simply as 'buyer be ware or 'caution buyer. In other words, it means that it is not the duty of the seller to disclose the defects in the goods, if any, that he is selling. Conversely speaking, it is the duty of the buyer to inspect and examine the goods he intends to buy, and to satisfy himself that they are free from any defects and that they will suit the purpose for which he is buying the goods in question.

For example, when we purchase an electric bulb, we must ask the buyer to show to you that it was not a fused one. Similarly, when we purchase an earthen pot, we must strike it softly with some coin to find out from the sound that it is not damaged and leaking. Alternatively, we may fill the pot with water to ensure that it was not leaking. If we will fail to do so before purchasing such goods and will later find that the bulb was fused or the earthen pot was leaking, we cannot hold the seller responsible and, therefore, we cannot ask the seller to exchange it. You can do so only before purchasing it, if it is found to be defective at the time of purchase itself.

Q30. Explain briefly the provisions of sale of Goods Act, 1930 for passing of property in specific/ascertained goods

Answer:

Property (Specific or ascertained goods) passes when intended to pass (Section 19): Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred, [sub-section (1)].

For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case, [sub-section (2)]

Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer, [sub-section (3)].

Q31. Write short notes on Transfer of Property in Unascertained Goods

Answer:

Transfer of property of unascertained goods: (Sec 23 of the Sale of Goods Act, 1930).

Where there is a contract for the sale of unascertained or future goods by description and the goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the consent of the buyer or by the buyer with the consent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

AS per section 18 of Sale of goods Act where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. 'Ascertainment' is the process by which the goods answering the description are identified and set apart. Goods sent on Approval or Return Basis

Q32. When is the property passes when goods are sent on approval or 'on sale or return' basis?

Answer:

Goods sent on approval or "on sale or return" (Section 24): When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer-

- > when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- > if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- > he does something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods.

Example: P brought a musical instrument from a musical shop on a condition that he will purchase it, if he likes that instrument. After a week he has informed the shop owner that he has agreed to purchase the musical instrument. The ownership is transferred when he has decided to purchase the instrument as his own.

Q33. When is the property passes when the seller reserves the right of disposal?

Answer:

Reservation of right of disposal (Section 25): Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. [Sub-section (1)]

Q34. Describe the circumstances under which the right to disposal may be reserved

Answer:

Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

- > If the goods are shipped or delivered to a railway administration for cargo and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the seller will be prima facie deemed to have reserved to the right of disposal.

QUESTION BANK



CA AKASH AGARWAL

SOGA/1930



- Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading if he does not accept or pay the bill.
- And if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

It should be noted that Section 25 deals with "conditional appropriation" as distinguished from 'unconditional appropriation' dealt with under Section 23 (2).

Q35. What is appropriation of goods under the Sale of Goods Act, 1930? State the essentials regarding appropriation of unascertained goods

Answer:

The contract the second, and thereupon the property passes to the buyer. Sale of unascertained goods [Sections 18 and 23: The provisions relating to passing of property on sale of unascertained goods are split into two sections. Section 18 is the first relevant provision.

Sec. 18. Goods must be ascertained- Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. The other provision is in Section 23.

sec. 23. (1) Sale of unascertained goods and appropriation.

Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Thus, ascertainment of the goods is the first condition and their appropriation to Ascertainment;

- **"Ascertainment"** is the process by which the identity of the goods to be delivered under the contract is established.
- But **"a mere setting apart or selection by the seller of the goods which he expects to use in performance of the contract is not enough"**. They must also be appropriated to the contract.
- The distinction between "ascertainment" and "appropriation" is that ascertainment can be a unilateral act, that is, the seller alone may set apart the goods. But "appropriation"-involves "the element of common intention".
- To constitute an appropriation of the goods to the contract, the parties must have had, or be reasonably supposed to have had, an intention to attach the contract irrevocably to those goods, so that those goods and no others are the subject of the sale and become the property of the buyer."

Example: one of the conditions adopted by the Coffee Board of India for auction sale of coffee is that the property would not pass to the bidder until full price was paid and the coffee sold was

weighed and set apart for delivery to him. This act of setting apart is known as "ascertainment" and it would amount to appropriation if it has the assent of the buyer.

Appropriation:

Selection of the goods with the exclusive intention of using them in performance of the contract and with the mutual consent of the parties is what constitutes "appropriation". For example, in **Rhodes v Thwakes:**

There was a sale of twenty hogsheads of sugar out of a larger quantity. Four hogsheads were filled and taken away by the buyer. Subsequently, the seller filled sixteen more hogsheads and informed the buyer who promised to take them away. But before he could do so the goods were lost.

Property does not pass till appropriation: The act of appropriation has usually to be done the seller. Where has done nothing to sort out the goods, the question of the property in them passing to the buyer does not arise. Thus, Where there was a contract for the sale of a quantity of liquor out of a cask containing a much larger quantity no part having been separated or bottled, the property did not pass.

Q36. Briefly explain the rule 'Risk prima facie passes with ownership'

Answer:

The general rule is, **"unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not"**.

However, **Section 26 also lays down an exception to the rule that 'risk follows ownership'**. It provides that where delivery of the goods has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Thus, in ordinary circumstances, risk is borne by the buyer only when the property in the goods passes over to him. However, the parties may by special agreement stipulate that 'risk' will pass sometime after or before the property has passed.

Risk prima facie passes with ownership: The owner of goods must bear the loss or damage of goods unless otherwise is agreed to. Under Section 26 of the Sale of Goods Act, unless otherwise agreed, the goods remain at the seller's risk until property therein has passed to the buyer. After that event they are at the buyer's risk, whether delivery has been made or not.

Example: A bids for an antique painting at a sale by auction. After the bid, when the auctioneer struck his hammer to signify acceptance of the bid, he hit the antique which gets damaged. The loss will have to be borne by the seller, because the ownership of goods has not yet passed from the seller to the buyer.

The aforesaid rule is, however, subject to two qualifications:

- If **delivery has been delayed by the fault of the seller or the buyer**, the goods shall be at the risk of the party in default, as regards loss which might not have arisen but for the default.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



- The duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally.

Example: A contracted to sell 100 bales of cotton to B to be delivered in February. B took the delivery of the part of the cotton but made a default in accepting the remaining bales. Consequently, the cotton becomes unfit for use. The loss will have to be borne by the buyer. It should, however, be remembered that the general rule shall not affect the duties or liabilities of either seller or buyer as a bailee of goods for the other, even when the risk has passed.

As noted above, the risk (i.e., the liability to bear the loss in case property is destroyed, damaged or deteriorated) Passes with ownership. The parties may, however, agree to the contrary. For instance, the parties may agree that risk Will pass sometime after or before the property has passed from the seller to the buyer.

- Q37. What will be the consequences when the goods are sold by a person not the owner and without Owner's consent?

Answer:

In general, the seller sells only such goods of which he is the absolute owner. But sometimes a person may sell goods of which he is not the owner, then the question arises as to what is the position of the buyer who has bought goods by paying price. The general rule regarding the transfer of title is that the seller cannot transfer to the buyer of goods a better title than he himself has. If the seller is not the owner of goods, then the buyer also will not become the owner i.e. the title of the buyer shall be the same as that of the seller. This rule is expressed in the Latin maxim "Nemo dat quod non habet" which means that no one can give what he has not got.

Example 1: If A sells some stolen goods to B, who buys them in good faith, B will get no title to that and the true owner has a right to get back his goods from B.

Example 2: P, the hirer of vehicle under a hire purchase agreement, sells them to Q. Q though a bona de purchaser, does not acquire the ownership in the vehicle. At the most he acquires the same right as that of the hirer

If this rule is enforced rigidly then the innocent buyers may be put to loss in many cases. Therefore, to protect the interests of innocent buyers, a number of exceptions have been provided to this rule.

- Q38. Define buyer Delivery, Sale, Hire, Barter Exchange and Bailment in the Contract of Sale of Goods Act

Answer:

It extends to the whole of India. It shall come into force on the 1st day of July, 1930.

- **"Buyer"** means a person, who buys or agrees to buy goods,
- **"Delivery"** means voluntary transfer of possession from one person to another.
- **"Sale"** means transfer of property in goods for a price.

- **"Hire Purchase Agreement"** means the seller delivers the possession of the goods to the other person and he charges rent for the goods. After receiving the price of the goods, the ownership of the goods is passed on to the purchaser.
- **"Barter exchange"** means exchange of goods for goods.
- **"Bailment"** means only the possession is transferred from the bailor to the bailee. Such transactions may be for the purpose of keeping the goods in the safe custody or may be for furnishing security.

- Q39. Write the explanatory notes on 'Sale' and Agreement to sell". Briefly state the salient features of sale and agreement to sell?

Answer:

Distinction between sale and an agreement to sell: The differences between the two are as follows:

Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer <u>immediately</u> .	Property in the goods passes to the buyer <u>on future date or on fulfilment of some condition</u> .
Nature of contract	It is an <u>executed contract</u> , i.e. contract for which consideration has been paid.	It is an <u>executory contract</u> , i.e. contract for which consideration is to be paid at a future date.
Remedies for breach	The <u>seller can sue</u> the buyer for the price of the goods because of the passing of the property therein to the buyer.	The <u>aggrieved party can sue</u> for damages only and not for the price, unless the price was payable at a stated date.
Liability of parties	A <u>subsequent loss or destruction of the goods</u> is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates <u>jus in rem</u> .	Creates <u>jus in personam</u> .
Right of resale.	The <u>seller cannot resell</u> the goods.	The <u>seller may sell the goods</u> since ownership is with the seller.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



Q40. Explain the main points of distinction between the sale and hire purchase

Answer:

The main points of distinction between the 'sale' and 'hire-purchase' are as follows:

Basis of difference	Sale	Hire- Purchase
Time of passing property	Property in the goods is <u>transferred</u> to the buyer <u>immediately</u> at the time of contract.	The property in goods passes to the hirer upon <u>payment of the last instalment</u> .
Position of the party	The position of the buyer is that of the <u>owner of the goods</u> .	The position of the hirer is that of a <u>bailee till he pays the last instalment</u> .
Termination of contract	The <u>buyer cannot terminate the contract</u> and is <u>bound to pay the price of the goods</u> .	The hirer may, if he so likes, <u>terminate the contract by returning the goods</u> to its owner <u>without any liability to pay the remaining instalments</u> .
Burden of Risk of insolvency of the buyer	The <u>seller takes the risk</u> of any loss resulting from the insolvency of the buyer.	The <u>owner takes no such risk</u> , for if the hirer fails to pay an instalment, the owner has right to take back the goods.
Transfer of title	The <u>buyer can pass a good title</u> to a bona de purchaser from him.	The <u>hirer cannot pass any title</u> even to a bona de purchaser.
Resale	The buyer in sale <u>can resell</u> the goods.	The hire purchaser <u>cannot resell</u> unless he has paid all the instalments.

Q41. Explain the main points of distinction between the sale and bailment.

Answer:

The difference between bailment and sale may be clearly understood by studying the following:

Basis of difference	Sale	Bailment
Transfer of property	The <u>property</u> in goods is <u>transferred</u> from the seller to the buyer.	There is only <u>transfer of possession</u> of goods from the bailor to the bailee for any of the reasons like safe custody, carriage etc.
Return of goods	The <u>return</u> of goods in contract of sale is <u>not possible</u> .	The bailee <u>must return the goods</u> to the bailor on the accomplishment of the purpose for which the bailment was made.
Consideration	The consideration is the <u>price in terms of money</u> .	The consideration may be <u>gratuitous or non-gratuitous</u> .

Q42. State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. Examine whether there should be an agreement between the parties in order to constitute a sale under the said Act.

Answer:

Essentials or Contract of Sale:

The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

- There must be at least two parties.
- The subject matter of the contract must necessarily be goods (hi) A price in money (not in kind) should be paid or promised.
- A transfer of property in goods from seller to the buyer must take place.
- A contract of sale must be absolute or conditional [section 4(2)]
- All other essential elements of a valid contract must be present in the contract of sale

Q43. How is a contract of sale made?

Answer:

Analysis of section 5 of the Sale of Goods Act: A contract of sale may be made in any of the following modes.

- Contract of sale is made by an offer to buy or sell goods for a price and acceptance of such offer.
- There may be immediate delivery of the goods; or
- There may be immediate payment of price, but it may be agreed that the delivery is to be made at some future date; or
- There may be immediate delivery of the goods and an immediate payment of price; or
- It may be agreed that the delivery or payment or both are to be made in instalments; or
- It may be agreed that the delivery or payment or both are to be made at some future date.

Q44. Briefly explain the term 'Goods' and its various types under the Sale of Goods Act.

Answer:

Goods may be classified under the following three broad categories:

- Existing Goods;
- Future Goods; and
- Contingent Goods.

Existing or future goods:

- The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.
- There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.
- Where by a contract of sale the seller purports to affect a present sale of future goods, the contract operates as an agreement to sell the goods

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



Q45. Write explanatory notes on 'Future Goods' and 'Specific Goods'.

Answer:

"Future Goods" and "Specific goods (sale of Goods Act, 1930):

"Future Goods" means goods to be manufactured or produced or acquired by seller after making the contract of sale. When there is a contract for Sale of future of unascertained goods, property in the goods is not transferred to the buyer unless until the goods are ascertained (sec. 18).

In the case of sale of unascertained goods by description, property passes to the buyer when goods of that description in a deliverable state are unconditionally appropriated to the contract. On the other hand, **"specific goods"** means goods identified at the time of contract.

In a sale of specific or ascertained goods, the property in them transferred to the buyer as such time as the parties to the contract intend it to be transferred. The intention of the parties is ascertained from the terms of the contract the conduct of the parties and the circumstances of the case.

Q46. Explain the consequences when goods perish on the agreement to sell.

Or

What are the consequences of 'destruction of goods' under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected?

Answer:

Goods perishing before making of contract (Section 7): Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description contract.

Base Definer: A agrees to sell B 50 bags of wheat stored in the A's godown. Due to water logging, all the goods stored in the godown were destroyed. At the time of agreement, neither parties were aware of the fact. The agreement is void.

Goods perishing before sale but after agreement to sell (Section 8): Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided

Q47. Define price. How is it fixed in the contract of sale?

Answer

Price means the monetary consideration for sale of goods (Section 2 (10)). By virtue of Section 9, the price in the contract of sale may be-

- (1) fixed by the contract, or
- (2) agreed to be fixed in a manner provided by the contract, e.g., by a valuer, or
- (3) determined by the course of dealings between the parties.

Q. 48. In connection with the delivery of goods, state the provisions of sale of Goods Act in respect of:

- i. Time of delivery
- ii. Goods in possession of third party
- iii. Cost of delivery

Answer:

(i) Time of Delivery: [Section 36(2) & 36(4)]

- The seller is bound to deliver the goods:
- **Fixed time-** If time is fixed, then within fixed time.
- **No time is fixed -** If no time is fixed, then within reasonable time. Demand or tender of delivery should be made at the reasonable hour.
- **Reasonable time is a question of fact.**

(ii) Goods in possession of a 3rd party: (Section 36(3))

- If the goods are in possession of 3 person, no delivery takes place unless such 3rd person acknowledges the buyer that he holds goods on behalf of seller.
- But where the goods have been sold by the issue or transfer of any document of title to goods e.g. Railway receipt or a bill of lading, such third party's consent is not required.

(iii) Cost of Delivery: [Section 36(5)]

- Unless otherwise agreed,
- Expenses to be borne by seller - Expenses up to putting the goods in deliverable state.
- Expenses to be borne by buyer - Expenses relating to take the possession of goods.

[Study Material]

Q49. What are the rights and duties of a seller?

Answer

Rights of the Seller as per the of the Sale of Goods Act, 1930:

- Right to Reserve Disposal of Goods:
- Right to Assume Buyer's Acceptance:
- Right to Deliver Goods upon Buyer's Application:
- Right to Exercise Lien and Retain Possession:
- Right to Stop Goods in Transit:
- Right to Resell Goods under Certain Circumstances:
- Right to Withhold Delivery when Property has not Passed:
- Right to Sue for Price:

Duties of Seller

- Duty to Arrange for Transfer of Property:
- Duty to Appropriate and Conform Goods to the Contract:
- Duty to Pass Absolute and Effective Title:

QUESTION BANK



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SOGA 1930



- Duty to Deliver Goods as per Contract Terms:
- Duty to Put Goods in Deliverable State:
- Duty to Deliver Goods in a Timely Manner:
- Duty to Bear Expenses of Delivery:
- Duty to Deliver Agreed Quantity:

[Study Material]

Q50. What are the rights and duties of a buyer?

Answer

Rights of Buyer

- Right to Delivery of Goods as per Contract:
- Right to Reject Non-Conforming Goods
- Right to Repudiate the Contract in the Absence of Agreement for Instalments
- Right to Be Informed and Arrange for Insurance
- Right to Examine Goods for Conformity
- Right to Sue for Price Recovery
- Right to Sue for Damages for Non-Delivery
- Right to Sue for Specific Performance
- Right to Sue for Breach of Warranty or Condition

Duties of Buyer

- Duty to Accept Delivery of Goods
- Duty to Pay the Price for Possession
- Duty to Demand Delivery at Reasonable Hour
- Duty to Accept Goods in Instalments
- Duty to Take Delivery within a Reasonable Time
- Duty to Pay Damages for Non-Acceptance
- Duty to Pay the Price as Property Passes

EXTRA THEORY QUESTIONS

[PP. June 2015]

[3 Marks]

Q.51. With a view to boost the sales, M/s. ABC Ltd. sells a new machine to Mr. B on trial basis for a period of 3 days with a condition that if Mr. B is not satisfied with the performance of the new machine, he can return back the new machine. However, the machine was destroyed in a fire accident at the place of Mr. B before the expiry of 3 days. Decide whether Mr. B is liable for the loss suffered under Sale of Goods Act, 1930.

Answer.

Section 8 of Sale of Goods Act, 1930, describes about goods perishing before sale but after agreement to sell.

If without any fault of seller or buyer, the goods in contract perishes or gets damaged leaving them not matching with description before passing of risk to buyer, the agreement becomes void.

In given case, new machine was destroyed before the transfer of property from the seller to the buyer. The risk passes only when the ownership is transferred to the buyer. Therefore, Mr. B is not liable for the loss suffered due to the fire accident over which B has no control.

Thus M/s. ABC Ltd. will have to bear whatever loss that has taken place due to the fire accident.

[PP. June 2015]

[3 Marks]

Q. 52. Angel agrees to sell to Peter his two Mercedes cars on the terms that the price was to be fixed by David. Peter takes the delivery of one car immediately. David refuses to oblige Angel and Peter and fixes no price. An- gel asks for the return of the car already delivered whereas Peter insisted on the delivery of the second car to him for a reasonable price of both the cars. Decide the case.

Answer.

As per Section 10 of the Sale of Goods Act, the parties to the contract of sales may agree to the valuation done by the 3rd party which have no interest in the contract except making a fair valuation of the subject matter of sales.

It is quite possible that the 3rd party may not do the valuation due to his own. inability or due to fault of either of the parties to the contract.

If the 3rd party does not make any valuation for reasons which are not attributable to any party, then the contract is void.

If non-valuation of the goods by the 3rd party is attributed to any fault on the part of any party to the contract, the aggrieved party may sue the party at fault for breach of contract and even demand damages from him.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



In given case, the 3rd party refuses to fix the price, the contract becomes void except as to part of goods delivered and accepted pay as regards which the buyer must pay a reasonable price. Thus as regards the car already delivered, Angel cannot ask for its return and must accept a reasonable price for that. As regards the second car, Peter cannot insist on its delivery to him since the contract has become void. But, on mutual understanding both of them deal accordingly.

[PP. June 2015]

[3 Marks]

Q.53. With a view to boost the sales, M/s. ABC Ltd. sells a new machine to Mr. B on trial basis for a period of 3 days with a condition that if Mr. B is not satisfied with the performance of the new machine, he can return back the new machine. However, the machine was destroyed in a fire accident at the place of Mr. B before the expiry of 3 days. Decide whether Mr. B is liable for the loss suffered under Sale of Goods Act, 1930.

Answer.

Section 8 of Sale of Goods Act, 1930, describes about goods perishing before sale but after agreement to sell.

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In given case, new machine was destroyed before the transfer of property from the seller to the buyer.

The risk passes only when the ownership is transferred to the buyer. Therefore, Mr. B is not liable for the loss suffered due to the fire accident over which B has no control.

Thus M/s. ABC Ltd. will have to bear whatever loss that has taken place due to the fire accident.

[PP. June 2014, Dec 2014 & Dec 2016]

[5 Marks]

Q. 54. One packet of beauty soap was delivered "on sale or return" basis to Mr. Lala who delivered the same to Mr. Mohan, Mohan delivered to Mr. Nathan. Soaps got stolen from Nathan but before he signifies his acceptance. Hence, Nathan is to bear the loss. Answer based on legal provision.

Or

Lalit delivered sarees valuing 50,000 to Rohit on Sale or Return Basis. Rohit further delivered these sarees to Sumit and Sumit to Mohit on the same terms and conditions. Subsequently, these sarees were burnt by fire while in the custody of Mohit. Lalit filed a suit against Mohit for the recovery of the price, with reference to provisions of the Sale of Goods Act, 1930, examine whether Lalit's suit for the price shall be maintainable.

Or

A delivered some diamonds to B on sale or return basis. B delivered the diamonds to C and C to D on similar terms. The diamonds were stolen while in the custody of D. Who shall suffer the loss?

Answer:

As per Section 24 of Sale of Goods Act, 1930, when goods are sold with an option to approve or return the goods within a specified time, it is called sale on return or approval basis. Here, the property in goods remains with seller till approval is received from buyer.

The property therein passes to the buyer when:

Buyer signifies his approval for goods.

Buyer does an act leading to approval of contract.

In case time is specified, if he doesn't give his approval but retain goods without giving notice of retention, then on expiration of time, the property transfers to buyer. In case no time is specified, then reasonable time period is to be counted.

In given case, the property in goods passed to Lala when Lala delivered to Mohan and when Mohan delivered it to Nathan. But the soap packet was stolen from Nathan before he signifies his acceptance. So, at that point Mohan was the owner of the goods and he should bear the loss.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



[PP. June 2017]

[8 Marks]

Q. 55. Mr. V bales of cotton from **V**, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930, explain as to who will bear the loss and to what extent?

Ans.

As per Section 26 of the Sale of Goods Act, 1930, the goods remains at the seller's risk until the property therein is transferred to the buyer, but when the property in goods is transferred to the buyer the goods are at the risk of the buyer whether delivery of the goods has been made or not.

As per Section 18 read with Section 23 of the Sale of Goods Act, 1930, in case of sale of unascertained goods:

No property in the goods is transferred to the buyer, unless and until the goods are ascertained and Where there is contract for the sale of unascertained or future goods by description, then goods are of that description, in a deliverable state and are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, Then the property in the goods thereupon passes to the buyer. Such assent may be express or implied. In given case, where the bales have been selected with the consent of the buyer's representatives, the property for those 60 bales have passed to the buyer as the goods have been appropriated.

Thus loss arising due to fire in case of 60 bales would be borne by Mr. S. As regards 40 bales, the loss would be borne by Mr. V, since the goods have not been identified and appropriated.

[PP. Dec 2017]

[8 Marks]

Q56. X, Y and Z were joint owners of a bus and possession of the said bus was with **Y**. **P** purchased the bus from **Y** without knowing that **X** and **Z** were also owners of the bus. Decide in the light of provisions of the Sale of Goods Act, 1930, whether the sale between **Y** and **P** is valid or not?

Answer:

This problem is based on Section 28 of the Sale of Goods Act, 1930 which lays down an exception to the general rule that a person cannot transfer a better title than that he himself possesses. A person who is one of joint owners may transfer a better title that he possesses. Section 28 provides that – "if one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell".

The given problem fulfills all such requirements. **X, Y** and **Z** are joint owners of the bus. **Y** had sole possession of it. In such a case if **P** has purchased the bus from **Y** in good faith without notice at the

time of sale that **Y** had no authority to sell, then **P** acquires good title and becomes full owner although **Y** was not the full owner.

[PP. Dec 2018]

[8 Marks]

Q57. K the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to **M**, a mercantile agent for sale at a price not less than 100, 000. The agent sells the car for 75, 000 to **B**, who buys the car in good faith and without notice of any fraud. **M** misappropriated the money also. **K** sues **B** to recover the car. Decide given reasons whether **K** would succeed.

Answer:

The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

- The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- The buyer should act in good faith.
- The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, **M**, the agent, was in the possession of the car with **K**'s consent for the purpose of sale. **B**, the buyer, therefore obtained a good title to the car. Hence, **K** in this case, cannot recover the car from **B**. A similar decision, in analogous circumstances, was taken in *Folkes v. King*.

Q58. Raman instructed **Soman**, a transporter, to send a consignment of apples to Mumbai. After covering half a distance, **Soman** found that the apples will perish before reaching Mumbai. Hence, he sold the same at a half the market price. **Raman** sued against **Soman**. Will he succeed?

Answer:

As per section 189 of the sale of Goods Act, 1930, An agent has the authority in an emergency to do all such acts as man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances. A typical case is where the agent handling perishable goods like 'apples' can decide the time, date and place of sale, not necessary as per instructions of the principal, with the intention of protecting the principal from losses. Here the agent acts in an emergency and act as a man of ordinary prudence. In the given case, **Soman** had acted in an emergency situation and **Raman** will not succeed against him

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



[P.P. Dec. 2014, June 2016 & June 2019]

[7 Marks]

Q. 59. RK sells 200 bales of clothes to SK and sends 100 bales by lorry and 100 bales by Railway. SK receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. RK being still unpaid, stops the goods in transit. The official receiver, on SK's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

Or

Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram still being unpaid stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

Or

Himadri sells 400 Kg. of tea to Rahul and sends 200 Kg. by lorry and 200 Kg. by railway. Rahul receives delivery of 200 Kg. sent by lorry, but before he receives the delivery of the tea sent by railway, he becomes bankrupt. Himadri still being unpaid stops the goods in transit. The official receiver, on Rahul's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930.

Answer.

As per Section 50 of Sale of Goods Act, 1930, subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit and retain them until payment or tender of the price.

Hence the major rules applicable would be:

The seller must be unpaid

- He must have parted with the possession of goods
- The goods must be in transit
- The buyer must have become insolvent

So, in given case RK may stop the goods in transit as he is still unpaid & SK have become insolvent.

The official receiver cannot claim the goods.

[P.P. June, 2018]

[7 Marks]

Q. 60. M/s. Tea Enterprises agreed to supply 2,200 Kg. of Tea to M/s. Gopal Enterprises at 1,200/- per Kg. by 30th April, 2018. On 1st March, 2018 M/s. Tea Enterprises informs Gopal Enterprises that they are not willing to supply the Tea as the price of Tea increased to 1,400/- per Kg. Examine the right of M/s. Gopal Enterprises.

Answer.

As per Section 32 of the Sale of Goods Act, 1930;

- the delivery of the goods and payment of the price are concurrent conditions unless otherwise agreed.
- The seller shall be ready and willing to give the possession of the goods to the buyer in exchange for the price.
- The buyer shall be ready and willing to pay the price in exchange for the possession of the goods.

As per Section 33 of Sale of Goods Act, 1930, the delivery of goods sold may be made-

- By doing anything which the parties agree; or
- It has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:

- To have delivery of the goods as per contract.
- To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods
- To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer
- To sue the seller for specific performance
- To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty.
- To sue the seller the damages for anticipatory breach of contract

In given case, as M/s Tea Enterprise is at fault, M/s Gopal Enterprise can exercise any of the above rights.



QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



[RTP Dec. 2018]

Q61. M/s. Wholesaler agreed to supply 1,000 Pcs. of Cotton Shirts to M/s. Retailer at 300 per shirt by 31.05.2014. On 01.02.2014 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to 350 each. Examine the right of M/s. Retailer.

Answer:

In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:

- (1) To have delivery of the goods as per contract. (Sec. 31 & 32);
- (2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;
- (3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods to the buyer (Sec 57);
- (4) To sue the seller for specific performance;
- (5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);
- (6) To sue the seller the damages for anticipatory breach of contract (Sec 60) In the instant case M/s. Retailer can exercise any of his rights discussed above

[MQP, June. 2014, Dec 2015 & Dec 2016]

[8 Marks]

Q. 62. Mr. Z bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e., whether it is fit to make ice. After using the same, Mr. Z came to know that the refrigerator was unfit for the purpose. State giving reasons as per the provisions of The Sale of Goods Act, 1930, is the dealer liable to refund the price?

Or

X buys synthetic pearls for a high price thinking that they are natural pearls. The seller though understood X's intention, kept silent. Examine the remedies X has against the seller as per the Sale of Goods Act, 1930.

Ans. As per Section 16(1) of the Sale of Goods Act, 1930, there is an implied condition as to quality & fitness.

There is no implied condition as to quality, or fitness of the article for any particular purpose as per maxim Caveat Emptor and so the seller cannot be held responsible. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim caveat emptor (let the buyer beware).

But

- If the buyer has made known the purpose to the seller or
- He is relying on skills & judgment of seller
- Or where his consent was obtained by fraud or misrepresentation, then condition to quality and fitness applies.

Note: This condition cannot be invoked against a casual seller.

The seller is under no duty to reveal unflattering truths about the goods sold. In the given case, Mr. Z bought a refrigerator from a dealer's shop. He did not mention the required purpose i.e. whether it is fit to make ice. After using the same Mr. Z came to know that the refrigerator was unfit for the purpose. A refrigerator is expected to function as a refrigerator, where it fails to, as in the present case. The dealer is liable to refund the price because refrigerator was unfit for the purpose for which it was meant for and the buyer was not required to disclose this particular purpose.

In given case, X has no remedy against the seller as when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody except himself.

Thus, X has no remedies against the seller.

[STUDY MATERIAL]

Q63. A agrees to sell certain goods to B on a certain date on 10 days credit. The period of 10 days expired and goods were still in the possession of A. B has also not paid the price of the goods. B becomes insolvent. A refuses to deliver the goods to exercise his right of lien on the goods. Can he do so under the Sale of Goods Act, 1930?

Or

Ram agreed to send a consignment to Shyam via a ship. This was done on the basis of an agreement where Shyam would have to pay 1,000 for the consignment upon delivery. However, Shyam became insolvent and Ram got to know about it before he despatched the goods for delivery to Shyam. Can Ram exercise his right of lien over goods as an unpaid seller against goods?

Answer:

Lien is the right of a person to retain possession of the goods belonging to another until claim of the person in possession is satisfied. The unpaid seller has also right of lien over the goods for the price of the goods sold.

Section 47(1) of the Sale of Goods Act, 1930 provides that the unpaid seller who is in the possession of the goods is entitled to exercise right of lien in the following cases:-

1. Where the goods have been sold without any stipulation as to credit
2. Where the goods have been sold on credit but the term of credit has expired
3. Where the buyer has become insolvent even though the period of credit has not yet expired.

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



In the given case, A has agreed to sell certain goods to B on a credit of 10 days. The period of 10 days has expired. B has neither paid the price of goods nor taken the possession of the goods. That means the goods are still physically in the possession of A, the seller. In the meantime, B, the buyer has become insolvent. In this case, A is entitled to exercise the right of lien on the goods because the buyer has become insolvent and the term of credit has expired without any payment of price by the buyer.

[STUDY MATERIAL]

Q64. Sita asked for 100 Litres of mustard oil from Gita. However when Gita delivered the same through her agent to Sita, Sita refused saying that it was palm oil and was not what she had contracted for. Gita's mustard oil therefore was not sold and she suffered damages. What can Gita do in this case where there is no default on her part and Sita wrongfully refused to take delivery of the goods within reasonable time?

Answer:

An unpaid seller in addition to his rights against the goods has rights against the buyer personally. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller can sue him for damages for non-acceptance of the goods.

OBJECTIVES

Q1. Multiple Choice Question

1. A sale is complete when the following is transferred from one

- a) Money
- b) Ownership
- c) Usage
- d) None of the above

2. The Consideration in contract of sale must be:

- a) Immovable
- b) Movable
- c) Price
- d) None of the above

3. The subject matter of the contract must be:

- a) Sale
- b) Product
- c) Service
- d) None of the above

4. On which date was the Sale of Goods enforced?

- a) 1948
- b) 1930
- c) 1932
- d) 1951

5. As per Sale of Goods Act, this is not included:

- a) Growing crop
- b) Money
- c) Table
- d) Goodwill

6. Which of the followings are not Goods as per Sale of Goods Act?

- a) Actionable claims
- b) Stock and share
- c) Growing crops
- d) Grass of things attached to earth

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



7. Goods displayed in a shop with a price tag are an
- Offer
 - Invitation to offer
 - Counter offer
 - None of the above
8. If P makes an agreement with Q, an artist, to paint a portrait of P for 2,000 and Q use his own canvas & paint. Here it is:
- Contract of Sale
 - Contract of work and material
 - Sale on approval
 - Hire Purchase agreement
9. Future good" is the goods to be manufactured or produced or acquired by the seller:
- After starting of the business.
 - Beginning of the financial year
 - Making of the contract of sale
 - Receiving of the supply order
10. Which one of the following is not feature of agreement to sale?
- It gives a right to the buyer against the seller to sue for damages.
 - The seller can sue for damages only in case of breach by the buyer.
 - Sales take place for exiting & specific goods.
 - It is an executory contract.
11. A contract of sale of goods is a contract whereby the seller transfers the property in goods to the buyer for:
- Exchange of goods
 - A price
 - A gift
 - Mutual satisfaction
12. Under the Sales of Goods Act, which of the delivery of goods is called as delivery by attornment?
- Actual
 - Symbolic
 - Constructive
 - Physical
13. Amit tells Bharat in the presence of Chetan that Amit is agent of Chetan. Chetan maintain silence instead of denying it. Later, if Amit sells Chetan's goods to Bharat, Chetan cannot dispute Bharat's title to the goods. This is example of:
- Sale by official receiver
 - Sale by a finder of goods
 - Sale by estoppel
 - Execution of Sale
14. The Latin Maxim "Nemo Dat Quod non Habet" means:
- Let the Buyer beware
 - No man can pass a better title than he has
 - No consideration - No contract
 - Ignorance of law is no excuse
15. Which of the following is not implied condition under the Sale of Goods Act, 1932
- Sale by description
 - Sale by discount price
 - Sale by sample
 - Quality or fitness
16. In a Breach of Condition in a contract of sale, the buyer.
- Cannot refuse to accept the goods
 - Has to pay the price
 - Can claim any damage
 - Can refuse to accept the goods
17. In a sale of goods, the doctrine of caveat emptor will not apply when there is:
- Usage of trade
 - Consent by fraud
 - Buyer's error of judgment
 - Merchantable Quality
18. Where seller delivers to the buyer a quantity of goods less than the contracted to sell, the buyer.
- May reject them
 - Should not reject them as more quantity might be supplied.
 - May resell them
 - Give low price for them

QUESTION BANK



CA AKASH AGARWAL

SOGA, 1930



19. Where goods are delivered to the buyer and he refuses to accept them, the buyer is not bound to:

- a) Retain them with him.
- b) Look-after the goods.
- c) Return them to the seller
- d) Store them in his godown

20. Which of the following is not an unpaid seller's right against the goods?

- a) The right of retention
- b) The right of stoppage in transit
- c) The right of seeking claim for damage
- d) The right of resale

21. An act to dissuade the intending buyer from bidding or from raising the price by pointing out defects in the goods or by doing some other acts which prevent persons from forming a fair estimate of the price of the goods is known as:

- a) Knock out agreement
- b) Damping
- c) Puffers
- d) None of the above

22. A person who is employed by the seller to raise the price by fictitious bids. Such person is known as:

- a) Puffer
- b) By bidder
- c) Decoy Ducks
- d) All of the above

23. In case of a sale by auction the sale may be notified to be subject to a:

- a) Recovery price
- b) Cost price
- c) Market price
- d) Reserved price

Q2. True or False

- 1. Condition is a stipulation which is essential to the main purpose of the contract.
- 2. The sale of goods Act only deals only with goods that are immovable in nature.
- 3. Warranty is a stipulation which is collateral to the purpose of the contract.
- 4. Caveat Emptor is the concept of "let the buyer beware".
- 5. The subject matter of the contract under Sale of Goods Act must be goods.
- 6. Sale under Sale of Goods Act is an executory contract
- 7. Delivery means voluntary transfer of possession of goods from one person to another.
- 8. In an agreement to sale, the buyer is entitled to recover the same from the official liquidator in case of insolvency of the seller.
- 9. If the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer cannot sue to seller damages for non-delivery
- 10. If the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer cannot sue to seller damages for non-delivery
- 11. Goods to be manufactured or produced or acquired by the seller after making of the contract of sale are called future good.
- 12. An unpaid seller cannot exercise his right of lien when he is in possession of goods as agent for the buyer

Q3. Fill in the blanks

- 1. The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or ____ good
- 2. The ____ in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.
- 3. A contract of sale is made by an offer to buy or sell goods for a price and the ____ of such offer.
- 4. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a ____
- 5. A contract of sale may be ____ or conditional
- 6. "Sale" is an ____ contract
- 7. Goods to be manufactured or produced or acquired by the seller after making of the contract of sale are called
- 8. The seller of the goods is deemed to be ____ when the whole of the price has not been paid.

QUESTION BANK



CA AKASH AGARWAL

PA, 1932



INDIAN PARTNERSHIP ACT, 1932

ANSWERS

MCQ	True/False	Fill in the Blanks
1. B	1. True	1. Future
2. C	2. False	2. Price
3. A	3. True	3. Acceptance
4. B	4. True	4. Price
5. B	5. True	5. Absolute
6. A	6. False	6. Executed
7. B	7. True	7. Future goods
8. B	8. False	8. Unpaid seller
9. C	9. False	
10. C	10. True	
11. B	11. True	
12. C	12. True	
12. C		
14. B		
15. B		
16. D		
17. D		
18. A		
19. C		
20. C		
21. B		
22. A		
23. D		

PREVIOUS YEAR QUESTIONS & MQP & RTP

[PP. June 2017]

[5 Marks]

Q1. State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act. What are the rights of such a transferee?

Answer:

As per Section 29 of the Indian Partnership Act, 1932, a partner may transfer his interest in the firm by sale, mortgage or charge.

The transfer may be absolute or partial.

The transfer does not entitle the transferee, during the continuance of the firm:

To interfere in the conduct of the business of the firm, or

To require accounts of the firm, or

To inspect the books of the firm.

On transfer of interest by a partner, the transferee only becomes entitled to receive share of profit of the transferring partner. But in this case also the transferee has to accept the account of profits agreed to by the partners.

If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled to receive the transferring partner's share in the assets of the firm. For the purpose of ascertaining that share, he is entitled to an account as from the date of the dissolution.

QUESTION BANK



CA AKASH AGARWAL

PA, 1932



[PP. June 2017 & MTP June, 2019]

[9 Marks]

Q2. What are the rights of outgoing partners?

Answer:

As per Section 36 of Indian Partnership Act, 1932, an outgoing partner may carry on a business competing with that of the firm.

He may advertise such business, but, he may not-

- Use the firm name;
- Represent himself as carrying on the business of the firm; or
- Solicit the customers or persons who were dealing with the firm before he ceased to be a partner.
- As per Section 37 of Indian Partnership Act, 1932, where a partner has died or ceased to be a partner, the surviving and continuing partners may carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or the estate of deceased partner. In the absence of a contract to the contrary, an outgoing partner or the representative of the deceased partner are entitled at the option-
- To such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm; or
- To interest at 6% p.a. on the amount his share in the property of the firm.
- The surviving or continuing partners may purchase the interest of a deceased or outgoing partner and the same is duly exercised, the estate of the deceased partner or the outgoing partner is not entitled to any further or other share of profits & the partner who purchases it, does not in all material respects comply with the terms, he is liable to account under the provisions of this section.

[PP. July 2023]

[7 Marks]

Q3. Prepare the list of mutual rights & liabilities of partners as per Indian Partnership Act, 1932.

Answer:

Mutual rights & liabilities of partners:

- A partner is not entitled to receive remuneration for taking part in the conduct of the business.
- The partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm.
- Where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits.
- A partner, making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at 6% per annum.
- A partner shall indemnify the firm or any loss caused to it by his wilful neglect in the conduct of the business of the firm.
- The firm shall indemnify a partner in respect of payments made, and liabilities incurred, by him-
- In the ordinary and proper conduct of the business, and
- In doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be Done by a person of ordinary prudence, in his own case, under similar circumstances; and
- Section 16 provides that if a partner derives any profit for himself-
- From any transaction of the firm; or
- From the use of the property, or
- Business connection of the firm; or
- The firm name;
- He shall account for that profit and pay it to the firm.

If a partner carries on any business of the same nature as, and competing with, that of the firm, he shall account for and pay, to the firm, all profits made by him in that business.

QUESTION BANK



CA AKASH AGARWAL

DA, 1932



[MTP, Dec 2017, MQP June 2023]

[7 Marks]

Q4. Mode of settlement of accounts between partners

Or

Demonstrate the differences between various modes for settlement of accounts between the partners after dissolution.

Answer:

Section 48 provides the mode of settlement of accounts between the partners after the dissolution. In this regard, the following shall be observed, subject to the agreements by the partners -

- 1) losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and lastly if necessary by the partners individually in the proportions in which they were entitled to share profits;
- 2) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be applied in the following manner and order-
 - in paying the debts of the firm to the third parties;
 - in paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;
 - in paying to each partner ratably what is due to him on account of capital; and
 - the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

[MTP, June 2018]

[10 Marks]

Q5. Elucidate the steps to form a partnership. Does admission of a partner lead to reconstitution of a partnership firm?

Answer:

- The first step is to decide the number of partners of a firm.
- Then decide to who are the partners of the firm, considering the limit envisaged in the Act;
- The name of the partnership firm is selected subject to the provisions of the partnership Act;
- Select the business to be done by the partnership and object of the business;
- Decide the capital to be brought by each and every partner;
- Prepare the agreement deed of the firm – the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This document prescribes the a to z of the partnership firm to be formed;
- The agreement should invariably in writing and signed by all partners;
- The provisions contained in the agreement are binding all partners;
- Open bank account in the name of the partnership firm;

- The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred.
- In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority;
- Acquire all mandatory licences from the respective authorities for the conduct of the business;
- Registration with required tax authorities i.e., direct tax as well as indirect tax such as central excise, service tax, VAT etc.,
- The Registration certificate is the conclusive evidence of the formation of the partnership firm

Admission of new partner

Admission of a partner is one of the modes of reconstitution of a partnership firm. A new partner may be admitted in a partnership firm either for the increase of capital of the firm or to strengthen the management of the firm. A new partner may be admitted with the consent of all existing partners as per the provisions of the agreement of the firm. For example, Hari and Haqqe are partners sharing profit in the ratio of 3:2. On April 1, 2013 they admitted John as a new partner with 1/6th share in the profits of the firm. In this case, with the admission of John the firm is reconstituted. The new partner is entitled the following rights -

- The right to share in the assets of the partnership firm; and
 - The right to share the profits in the business.
- The following are to be taken care of while admitting a new partner -
- Computation of new profit-sharing ratio and sacrifice ratio;
 - Accounting treatment of goodwill;
 - Revaluation of assets and liabilities;
 - Treatment of undisbursed profits and accumulated losses;
 - Adjustment of capital accounts.

QUESTION BANK



CA AKASH AGARWAL

PA, 1932



[MQP, Dec. 2023]

[7 Marks]

Q6. State the difference between a partnership and a company.

Answer:

BASIS	PARTNERSHIP	COMPANY
Legal entity	It is <u>not</u> a separate legal entity.	A company is a separate legal entity.
Number of members	<u>Minimum</u> required is <u>two</u> . <u>Maximum</u> number can be <u>100</u> subject to <u>some exceptions</u> present Rules provide <u>50</u> .	<u>Minimum</u> number of members for a <u>private</u> company is <u>2</u> and <u>maximum</u> <u>200</u> . <u>Minimum</u> number of members for a <u>public limited company</u> is <u>7</u> and there is <u>no limited</u> for <u>maximum</u> .
Transfer of shares	A partner <u>cannot transfer</u> his share <u>without the consent</u> of other members	<u>Transfer of shares</u> in a public limited company is <u>not a restricted one</u> .
Management	The firm can be <u>run by all or any of the partners</u> .	The <u>Board of Directors</u> is <u>having responsibility</u> to run the management
Profit distribution	Profit is distributed according to the <u>agreement</u> entered between partners; if <u>no agreement</u> <u>equal distribution</u> .	No requirement of profit distribution to members. It is <u>at the discretion of the management to declare dividend</u> that too only out of profits.
Relationship	The relationship with partners is of that of <u>agency</u> .	<u>No such relationship</u> in the company.
Remedy to creditors	The creditors of a firm can <u>proceed against the partners jointly and severally</u> .	The creditors can <u>proceed only against the company and not against shareholders</u> .
Liability	The liability of the partners is <u>unlimited</u> .	The liability of the members of the company is <u>limited</u> .
Audit	Audit is <u>not compulsory</u> for the partnership firm.	Various types of audit are <u>compulsory</u> for the company
Dissolution	Firm can be dissolved on the eve of <u>death of partner, retirement of partner</u> etc., unless otherwise than agreed to in the agreement.	A company can be dissolved <u>only by the winding up process</u> as ordered by the Court.

[MQP, June. 2023 & June 2023]

[7 Marks]

Q7. Prepare a list of the circumstances under which a partnership firm can be dissolved?

Or

Analyse the legal provision relating to modes of Dissolution of a firm under Sec. 39 of the Indian Partnership Act, 1932.

Answer:

As per Partnership Act, 1932, Section 39 provides that the dissolution of partnership between all the partners of a firm is called the 'dissolution of the firm'.

Modes of Dissolution of a firm:

1) Dissolution without the order of the court or voluntary dissolution

a) Dissolution by agreement [Section 40]

Section 40 provides that a firm may be dissolved with the consent of all partners or in accordance with a contract between the parties.

b) Compulsory dissolution [Section 41]

It provides that a firm is dissolved by the -

- > Adjudication of all the partners or of all the partners but one as insolvent; or
- > Happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership. Where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not cause the dissolution of the firm in respect of its lawful adventures and undertakings.

c) Dissolution on the happenings of certain contingencies [Section 42]

It provides that subject to the contract between the partners, a firm is dissolved-

- > if constituted for a fixed term, by the expiry of that term;
- > if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- > by the death of a partner; and
- > by the adjudication of a partner as an insolvent.

d) Dissolution by notice of partnership at will [Section 43]

- > Section 43 provides that where the partnership is at will, the firm may be dissolved by any partner giving notice, in writing, to all the other partners, of his intention to dissolve the firm. The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of then notice.

2. Dissolution by the court [Section 44]

Section 44 prescribes the grounds on which the Court may direct dissolution of a firm in a suit as discussed below if the:

- > Partner has become of unsound mind;
- > Partner has become permanently incapable of performing his duties as partner;
- > Partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business;

QUESTION BANK



CA AKASH AGARWAL

DA, 1932



- Partner will fully or persistently commits breach of agreements relating to Management of the affairs of the firm or the conduct of its business; or Conduct of its business; or Otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
- Partner has in any way Transferred the whole of his interest in the firm to a third party; or Has allowed his share to be charged; or Has allowed it to be sold in the recovery of the arrears of land revenue; or of any dues recoverable as arrears of land revenue due by the partner; The business of the firm cannot be carried on save at a loss; or On any other ground which renders it just and equitable that the firm should be dissolved.

[MQP, Dec. 2024]

[7 Marks]

Q8. Demonstrate the concept of implied authority of a partner.

Answer:

Section 22 provides that in order to bind a firm, an act or instrument, done or executed by a partner or other person on behalf of the firm, shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Section 19 provides that subject to the provisions of Section 22, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by firm, binds the firm. The authority of a partner to bind the firm, conferred by this section, is called his 'implied authority'. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- submit a dispute relating to the business of the firm to arbitration;
- open a banking account on behalf of the firm in his own name;
- compromise or relinquish any claim or portion of a claim by the firm;
- withdraw a suit or proceeding filed on behalf of the firm;
- admit any liability in a suit or proceeding against the firm;
- acquire immovable property on behalf of the firm;
- transfer immovable property belonging to the firm; or
- enter into partnership on behalf of the firm.

➤ Extension and restriction of implied authority

Section 20 provides that the partners may extend or restrict the implied authority of any partner by contract between the partners. Despite such restrictions, any act done by a partner on behalf of the firm, which falls within his implied authority, binds the firm unless the person, with whom he is dealing, knows of the restriction or does not know or believe that partner to be a partner.

[MQP, Dec. 2023]

[7 Marks]

Q9. Demonstrate the procedure to form a partnership under "The Partnership Act, 1932".

Answer:

Partnership is one of the modes of business. It is governed under the Indian Partnership Act, 1932. For constituting a partnership, the following ingredients are necessary-

- There should be an agreement between the parties;
- The agreement must be to share the profits of the business and the business must be carried on by all or any of them acting for all;
- The existing of an agency between the concerned persons inter-se. All the above ingredients must exist before a partnership come into existence. Actual starting of business to registration is not a condition precedent.

Procedure to form a partnership

The first step is to decide the number of partners of a firm. The law provides for minimum 2 number of partners. The upper limit is 10 in case of banking business and 20 in respect of other business

- First decide to who are the partners of the firm, considering the limit envisaged in the Act;
- Select the business to be done by the partnership and object of the business;
- Decide the capital to be brought by each and every partner;
- Prepare the agreement deed of the firm - the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This documents prescribes the 'a to z' of the partnership firm to be formed;
- The agreement should invariably in writing and signed by all partners;
- The provisions contained in the agreement are binding all partners;
- The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred.
- Open bank account in the name of the partnership firm;
- In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority;
- Acquire all mandatory licenses from the respective authorities for the conduct of the business;
- Registration with required tax authorities i.e., direct tax as well as indirect tax such as central excise, service tax, VAT etc.,
- The Registration certificate is the conclusive evidence of the formation of the partnership firm.

QUESTION BANK



CA AKASH AGARWAL

IPA, 1932



[MQP, Dec. 2018]

[5 Marks]

Q10. State the rules of partnership by holding out, as per Indian Partnership Act, 1932

Answer:

As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

- Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.
- Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

[PP, Dec. 2023]

[7 Marks]

Q11. Discuss the rights and liabilities of partners after dissolution as per Indian Partnership Act, 1932.

Answer:

Right of partners after dissolution

Section 46 provides that on the dissolution of a firm, every partner or his representative is entitled as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights.

Liability of partners after dissolution

Section 45 provides that the liability of the partners will continue for the acts done before the dissolution, even after the dissolution, until public notice is given of the dissolution. The following partner is not liable for the acts after the date on which he ceases to be a partner-

- a deceased partner;
- a partner who is adjudicated as an insolvent;
- a partner, who not having been known to the person, dealing with the firm, to be a person, retires from the firm

In 'Rajagopala Pillai v. Krishnaswami Chetti' - 8 Mad LJ 261 it was held that the legal representatives of a deceased partner cannot be validly bound by an acknowledgement made by the surviving partner after dissolution caused by death. Once the partnership is dissolved, even the theory of implied agency disappears.

After the jural relationship of partners having been put an end, there can be no question of any partner, acting in any representative capacity, so as to bind the firm.

[RTP, Dec. 2018]

Q12. How can the existence of partnership be determined.

Answer:

- whether a group of persons is or is not a firm; or
- whether a person is or is not a partner in a firm regard shall be had to the real intention between the parties, taking into the facts together.

The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not make such persons as partners.

The receipt - of a share of the profits of a business;

- or of a payment contingent upon the earning of profits; or
- varying with the profits earned by a business, by a person does not of itself, make him a partner with the persons carrying on the business.

The receipt of such share or payment -

- by a lender of money to persons engaged or about to engage in any business; by a servant or agent as remuneration;
- by the widow or child of a deceased partner, as annuity, or
- by a previous owner or part owner of the business as consideration for the sale of the goodwill or share thereof does not make the receiver a partner with the persons carrying on the business.

In S.K. Parthasarathy Naidu v. K. Rama Naidu' - AIR 2001 Mad 399 (405) it was held that the legal existence of a partnership is proved by facts to support such a claim. There need not be any particular form of document and in fact, the partnership can even be oral, but, whether a relationship of partners exists or does not exist depends on what was intended by parties. In Shiv Narain & Sons v. Commissioner of Income Tax' - AIR 1935 Lah 896 it was held that a partnership firm is not a person', but merely a collective-name for the individuals who are members of the partnership, and as such it cannot be a partner in another partnership firm. A partnership is a relationship which subsists between persons. A partnership firm is not a legal entity, is incompetent to enter into a partnership with another partnership firm.

QUESTION BANK



CA AKASH AGARWAL

IPA, 1932



EXTRA THEORY QUESTIONS

Q13. Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.

Answer:

A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows:

Rights:

- A minor partner has a right to his agreed share of the profits and of the firm.
- He can have access to, inspect and copy the accounts of the firm.
- He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

Q14. (i) What do you mean by 'Partnership for a fixed period' as per the Indian Partnership Act, 1932?

(ii) When the continuing guarantee can be revoked under the Indian Partnership Act, 1932?

(iii) What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?

Answer:

(i) Partnership for a fixed period (Indian Partnership Act, 1932): Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

(ii) Revocation of continuing guarantee (Section 38 of the Indian Partnership Act, 1932): According to section 38, a continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. Such change may occur by the death, or retirement of a partner, or by introduction of a new partner.

(iii) Goodwill: The term "Goodwill" has not been defined under the Indian Partnership Act,

1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm. Goodwill may be defined as the value of the reputation of a business in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Q15. What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?

Answer:

Application for Registration (Section 58):

The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- The firm's name
- The place or principal place of business of the firm,
- The names of any other places where the firm carries on business,
- the date when each partner joined the firm,
- the names in full and permanent addresses of the partners, and
- the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

Each person signing the statement shall also verify it in the manner prescribed.

A firm name shall not contain any of the following words, namely:-

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

Q16. "Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India?

Answer:

It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

Following are consequences of Non-registration of Partnership Firms in India:

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under **Section 69**, nonregistration of partnership gives rise to a number of disabilities which we shall presently discuss.

QUESTION BANK



CA AKASH AGARWAL

DA, 1932



Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.
- **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than Rs. 100 or pursue other proceedings to enforce the rights arising from any contract.
- **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Q17. With reference to the provisions of Indian Partnership Act, 1932 explain the various effects of insolvency of a partner.

Answer:

Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):

- The insolvent partner cannot be continued as a partner.
- He will be ceased to be a partner from the very date on which the order of adjudication is made.
- The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.
- The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication.
- Ordinarily, the insolvency of a partner results in dissolution of a firm; but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.

Q18. What are the different types of partnership?

Answer:

Partnership at will: Partnership at will is a partnership when:

- No fixed period has been agreed upon for the duration of the partnership; and
- There is no provision made as to the determination of the partnership.

Partnership for a fixed period: Where a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'.

Particular Partnership: A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'.

General Partnership: Where a partnership is constituted with respect to the business in general, it is called a general partnership.

Q19. Discuss the duties of a partner in a partnership firm

Answer:

- Partners are bound to carry on the business of the firm to greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative.
- Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm. The partner, committing fraud in the conduct of the business of the firm, must make good the loss sustained by the firm by his misconduct and the amount so brought in the partnership should be divided between the partners.

QUESTION BANK



CA AKASH AGARWAL

IP, 1932



CASE STUDY QUESTIONS

Q20. M/s ABC & Associates, a partnership firm with A, B, C as senior partners were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August, 2018, they inducted Mr. D, an expert in the field of carpet manufacturing as their partner. On 10th January 2020, Mr. D was blamed for unauthorized activities and thus expelled from the partnership by united approval of rest of the partners.

(i) Examine whether action by the partners was justified or not?

(ii) What should have the factors to be kept in mind prior expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?

Answer:

Expulsion of a Partner (Section 33 of the Indian Partnership Act, 1932):

A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.

The test of good faith as required under Section 33 includes three things:

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

(i) Action by the partners of M/s ABC & Associates, a partnership firm to expel Mr. D from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr. D. A proper notice and opportunity of being heard has to be given to Mr. D.

(ii) The following are the factors to be kept in mind prior expelling a partner from the firm by other partners:

- the power of expulsion must have existed in a contract between the partners;
- the power has been exercised by a majority of the partners; and
- it has been exercised in good faith.

Q21. P, Q and R are partners in a firm. As per terms of the partnership deed, P is entitled to 20 percent of the partnership property and profits. P retires from the firm and dies after 15 days. Q and R continue business of the firm without settling accounts. Explain the rights of P's legal representatives against the firm under the Indian Partnership Act, 1932?

Answer:

Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the of a contract to the contrary, the retired partner are entitled to claim either.

- Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or
- Interest at the rate of 6 per cent annum on the amount of his share in the property.

Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932, in the given problem, P's Legal representatives shall be entitled, at their option to:

- the 20% shares of profits (as per the partnership deed); or
- interest at the rate of 6 per cent per annum on the amount of P's share in the property.

Q22. Master M was introduced to the benefits of partnership of M/s XYZ & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. N, a supplier of material to M/s XYZ & Co., filed a suit against M/s XYZ & Co. for recovery of the debt due. In the light of the Indian Partnership Act, 1932, explain:

(i) To what extent M will be liable if he failed to give public notice after attaining majority?

(ii) Can Mr. N recover his debt from M?

Answer:

As per the provisions of Section 30(5) of the Indian Partnership Act, 1932, at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm.

However, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:

- He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(i) In the instant case, since, M has failed to give a public notice, he shall become a partner in the M/s XYZ & Co. and becomes personally liable to Mr. N, a third party.

(ii) In the light of the provisions of Section 30(7) read with Section 30(5) of the Indian Partnership Act, 1932, since M has failed to give public notice that he has not elected to not to become a partner within six months, he will be deemed to be a partner after the period of the above six months and therefore, Mr. N can recover his debt from him also in the same way as he can recover from any other partner.

QUESTION BANK



CA AKASH AGARWAL

IPA, 1932



Q23 Mr. Ajay and Mr. Vijay are partners in a partnership firm. Mr. Ajay introduced Rohan (an employee) as his partner to Sanjay. Rohan remained silent. Sanjay, a trader believing Rohan as partner supplied 50 Laptops to the firm on credit. After expiry of credit period, Sanjay did not get amount of Laptop sold to the partnership firm. Sanjay filed a suit against Ajay and Rohan for the recovery of price. Does Rohan is liable for such purpose?

Answer:

As per Section 28 of Indian Partnership Act, 1932, Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

In the given case, Rohan (the Manager) is also liable for the price because he becomes a partner by holding out as per Section 28 of Indian Partnership Act, 1932.

Q24 Ms. Manisha while drafting partnership deed taken care of few important points. What are those points? She want to know the list of information which must be part of partnership deed drafted by her. Also, give list of information to be included in partnership deed??

Answer:

Ms. Mansiha while drafting partnership deed must take care of following important points:

- No particular formalities are required for an agreement of partnership.
- Partnership deed may be in writing or formed verbally. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.
- Partnership deed should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
- If partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

List of information included in Partnership Deed while drafting Partnership Deed by Ms. Manisha:

- Name of the partnership firm.
- Names of all the partners.
- Nature and place of the business of the firm.
- Date of commencement of partnership.
- Duration of the partnership firm.
- Capital contribution of each partner.
- Profit Sharing ratio of the partners.
- Admission and Retirement of a partner.
- Rates of interest on Capital, Drawings and loans.

- Provisions for settlement of accounts in the case of dissolution of the firm.
- Provisions for Salaries or commissions, payable to the partners, if any.
- Provisions for expulsion of a partner in case of gross breach of duty or fraud.

Ms. Marisha may add or delete any provision according to the needs of the partnership firm.

Q25 M/s ABC & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s PQR & Company which is also an unregistered firm. M/s ABC & Company could not pay the price within the time as decided. M/s PQR & Company has filed the suit against M/s ABC & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;

- Whether M/s PQR & Company can file the suit against M/s ABC & Company?
- What would be your answer, in case M/s ABC & Company is a registered firm while M/s PQR & Company is an unregistered firm?
- What would be your answer, in case M/s ABC & Company is an unregistered firm while M/s PQR & Company is a registered firm?

Answer:

According to provisions of Section 69 of the Indian Partnership Act, 1932 an unregistered firm cannot file a suit against a third party to enforce any right arising from contract, e.g., for the recovery of the price of goods supplied. But this section does not prohibit a third party to file suit against the unregistered firm or its partners.

- On the basis of above, M/s PQR & Company cannot file the suit against M/s ABC & Company as M/s PQR & Company is an unregistered firm.
- In case M/s ABC & Company is a registered firm while M/s PQR & Company is an unregistered firm, the answer would remain same as in point a) above.
- In case M/s PQR & Company is a registered firm, it can file the suit against M/s ABC & Company.

Q26 Mukesh, Suresh and Rushikesh are partners in the firm M/s Mojo & Company. They admitted Brijesh as nominal partner and on agreement between all the partners, Brijesh is not entitled to share profit in the firm. After some time, a creditor Kamlesh filed a suit to Brijesh for recovery of his debt. Brijesh denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Kamlesh should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932

- Whether Brijesh is liable for the dues of Kamlesh against the firm.
- In case, Kamlesh has filed the suit against firm, whether Brijesh would be liable?

Answer:

Nominal Partner is a partner only in name. The person's name is used as if he were a partner of the firm, though actually he is not. He is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. A nominal partner must give public notice of his



QUESTION BANK



CA AKASH AGARWAL

PA, 1932



retirement and his insanity is not a ground for dissolving the firm. In the instant case, Brijesh was admitted as nominal partner in the firm. A creditor of the firm, Kamlesh has claimed his dues from Brijesh as he is the partner in the firm. Brijesh has denied for the claim by replying that he is merely a nominal partner.

- Brijesh is a nominal partner. Even he is not entitled to share the profits of the firm but is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Kamlesh like other partners.
- In case, Kamlesh has filed the suit against firm, answer would remain same.

Q27 K, H and M were friends and they decided to form a partnership firm and trade in a particular type of chemicals. After three years of partnership, a law was passed which banned the trading of such chemicals. As per the provisions of the Indian Partnership Act, 1932 can K, H and M continue the partnership or will their partnership firm get dissolved?

Answer:

Compulsory dissolution of a firm (Section 41)

A firm is compulsorily dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

In this case, the firm is carrying on the business of trading in a particular chemical and a law is passed which bans the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved in the light of Section 41 of the Indian Partnership Act, 1932.

Q28 Mr. Ravi and Mr. Rajesh are working as teacher in Vidya Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. Bob. It was decided between landlords and tenant that the rent would be Rs. 10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. Bob has to pay the electricity bill of Rs. 2800 and Rs. 200 as penalty to resume the electricity connection. Mr. Bob claimed Rs. 3000 from Mr. Ravi but Mr. Rajesh replied that he is liable only for Rs. 1500. Mr. Bob said that Mr. Ravi and Mr. Rajesh are partners therefore he can claim the full amount from any of the partner. Explain, whether under the provision of Indian Partnership Act, 1932, Mr. Ravi is liable to pay whole amount of Rs. 3000 to Mr. Bob?

Answer:

According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved.

- There must be an agreement between all the persons concerned;
- The agreement must be to carry on some business;
- The agreement must be to share the profits of a business and

- The business was carried on by all or any of them acting for all.

On the basis of above provisions and facts provided in the question, Mr. Ravi and Mr. Rajesh cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ravi is liable to pay his share only i.e. Rs. 1500. Mr. Bob has to claim rest Rs. 1500 from Mr. Rajesh.

Q29 State whether the following are partnerships under the Indian Partnership Act, 1932:

- Two firms each having 12 partners combined by an agreement into one firm.
- X and Y, co-owners, agree to conduct the business in common for profit as
- Some individuals form an association to which each individual contributes Rs. 500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.
- X and Y, co-owners share between themselves the rent derived from a piece of land.
- X and Y buy commodity P and agree to sell the commodity with sharing the profits equally.

Answer:

- Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.
- Yes, this is a case of partnership because X & Y, co-owners, have agreed to conduct a business in common for profit.
- No, this is not a case of partnership as no charitable association can be floated in partnership.
- No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
- Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.

Q30 M/s ABC is partnership firm and A, B and C are the partners. During the course of business travel, partner A recovered a sum of Rs. 15,000 in cash from the debtor of the firm and credit in his personal bank account. Does the act of A will amount to mis-appropriating the funds of the firm and utilisation of the same for the personal gain.

Answer:

Section 27 provides that the firm is liable for misapplication by partners. If -

- a partner, acting within his apparent authority, receives money or property from a third party and misapplies it; or
- a firm, in the course of its business, receives money or property from a third party and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

QUESTION BANK



CA AKASH AGARWAL

DA, 1932



Q31 M/s ABC is a partnership firm where Mr. X, Y and Z are partners. Mr. X signs a contract with Coal India Limited for supply of some goods, on behalf of the partnership firm. Can he do so individually or would he require the consent from other two partners?

Answer:

Section 18 provides that a partner is the agent of the firm for the purpose of the business of the firm. Section 22 provides that in order to bind a firm, an act or instrument, done or executed by a partner or other person on behalf of the firm, shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Section 19 provides that subject to the provisions of Section 22, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by firm, binds the firm. The authority of a partner to bind the firm, conferred by this section, is called his 'implied authority'.

Hence, though contract should be entered into with consent of all partners but a partner may enter into a contract within authority and it shall bind the firm.

Q32. Sunil, Bikash and Rishi were partners under the agreement that they were to share equally in the profits and losses of the firm. In a suit between them for dissolution and accounts, it is ascertained that contributions of Sunil, Bikash and Rishi to the capital of the firm, were ₹ 10,000, ₹ 5,000 and ₹ 1,000 respectively. The assets of the firm after paying debts of the firm and advances made by the partners, as distinguished from their contributions to the capital of the firm, are ₹ 7,000. Comment on the settlement of this partnership Account

Answer:

The deficiency of capital (which must be regarded as loss) being ₹ 9,000, each partner must contribute to the assets an equal share of the deficiency, i.e. ₹ 3,000. After this is done, the assets then available, ₹ 7,000 + ₹ 9,000 or ₹ 16,000 will be distributed among the partners with the result that each will have suffered a loss of ₹ 3,000.

In actual practice, it will not be necessary for Sunil and Bikash to pay ₹ 3,000 each but the matter will be settled on the basis of notional contributions so that Rishi whose capital is ₹ 1,000 only will pay ₹ 2,000 out of ₹ 9,000 with the firm. Sunil will take ₹ 7,000 and Bikash ₹ 2,000. Assuming that Sunil and Bikash contribute to the capital deficiency ₹ 3,000 each and Rishi cannot, Sunil and Bikash will share ₹ 13,000, i.e. ₹ 7,000 plus ₹ 6,000 in the proportion of ₹ 10,000: 5,000. Sunil will suffer a loss of ₹ 4,333 in all and Bikash ₹ 3,667.

OBJECTIVES

Q1. Multiple Choice Question

1. An act of a firm means:

- a) Any partner or agent of the firm which gives rise to a right enforceable by or against the firm
- b) Any act by all the partners
- c) Any omission by all the partners
- d) All of the above

2. Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Does it mean that losses are not shared?

- a) A minor may be admitted in partnership, only for the profits, but he cannot share in losses.
- b) It also depends on the partnership agreement. A person may share the profits but may not share in losses.
- c) Sharing of profits also include losses (negative profits)
- d) All of the above

3. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is called as:

- a) Particular partnership
- b) Partnership for a fixed term
- c) partnership at will
- d) None of the above

4. What information shall be given to the Registrar of Firms by a registered partnership firm:

- a) New opening/closing of the existing branch, if any.
- b) Change in the name of and address of the partner (s)/change in the constitution of the firm.
- c) What there is change in the name of the firm or in location of the principal place of business.
- d) All of the above.

QUESTION BANK



CA AKASH AGARWAL

IPA, 1932



5. Who can inspect the Register and filed documents at the office of the Registrar:

- a) Any Government servant
- b) The Partners of the firm
- c) The partners of the other firms
- d) Any person

6. What are the right of partners after dissolution:

- a) To have the surplus distributed among the partners or their representatives according to their rights.
- b) To have business wound up after dissolution
- c) To have the property of the firm applied in payment of the debts and liabilities of the firm.
- d) All of the above

7. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of on the amount of his share in the property of the firm:

- a) 9% p.a.
- b) 18% p.a.
- c) 6% p.a.
- d) 12% p.a.

8. The dissolution of partnership means:

- a) It means the dissolution of partnership between all the partners of a firm
- b) It means the change in the relations of the partners
- c) It means the reconstitution of the firm.
- d) None of the above.

9. In what circumstances a partner may retire:

- a) In accordance with an express agreement by the partners
- b) Where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
- c) With the consent of all the other partners

d) All of the above.

10. What would be the position, where a minor elect not to become a partner:

- a) He shall be entitled to sue the partners for his share of the property and profits.
- b) His rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice.
- c) His share shall not be liable for any acts of the firm done after the date of the notice. d) All of the above

11. A partner must give a public notice of his retirement from the firm in order absolve himself from the liability for the Acts of the other partners done after his retirement is known as:

- a) Dormant partner
- b) Ostensible partner
- c) Nominal partner
- d) Partner by estoppel

12. When a partnership firm is continued even after the expiry of fixed term is called:

- a) Perpetual partnership
- b) Fixed partnership
- c) Contract partnership
- d) Partnership at will

13. A person who is not a partner of a Partnership Firm, but he may liable for firm's debt as if he was a Partner. Such a person is called:

- a) Nominal Partner
- b) Sleeping Partner
- c) Partner by estoppels
- d) Partner for profit only

14. The provisions regarding maximum number of members in a partnership are given in:

- a) The Partnership Act
- b) The Companies Act
- c) The Societies Registration Act
- d) The Co-operative Societies Act

QUESTION BANK



CA AKASH AGARWAL

PA, 1932



15. X and Y agree to divide the profits of a business in equal shares but the loss if any is to be borne by X only. The partnership agreement is:

- a) Void
- b) Voidable
- c) Lawful
- d) Illegal

16. In the absence of Partnership agreement, the Partner has:

- a) Right to avail interest on advances paid to partnership firm.
- b) Right to avail interest on advances paid to partnership firm provided there is profit.
- c) Has no right to avail interest on advances.
- d) Has right to avail interest on advances even after dissolution of the firm.

17. X, Y and Z are partners in a firm. X, without the authority of Y and Z buys certain shares in his name out of partnership money. These shares will constitute:

- a) Partnership liability.
- b) Partnership property
- c) Partnership net worth
- d) Partnership capital

18. . When a partnership firm is continued even after the expiry of fixed term, it is called:

- a) Partnership at Will
- b) Perpetual Partnership
- c) Fixed Partnership
- d) Particular Partnership

19. Anusua and Shrita formed a partnership to undertake a construction of a shopping complex in New Delhi. This partnership is called:

- a) Partnership at will
- b) Particular partnership
- c) Unlimited partnership
- d) Partnership with undefined mission

20. The implied authority of the partner is to carry on the business of the firm in a -----way

- a) Casual
- b) Usual
- c) Unusual

d) Special

21. Public notice is not required when there is:

- a) Admission of new partner
- b) Retirement of any partner
- c) Expulsion of any partner
- d) Dissolution of the firm

22. In a partnership firm, the decision can be made by rule of majority when decisions relate to:

- a) Policy matters
- b) Ordinary routine matters
- c) Financial matters
- d) Buying and selling of property

23. Which of the following is not to be taken care while admitting a new partner?

- a) Computation of new profit sharing ratio and sacrifice ratio
- b) Accounting treatment of goodwill
- c) Professional qualification of admitting partner
- d) Revaluation of assets and liabilities]

24. . A new partner may be admitted in a partnership firm either for the increase of capital of the firm or to strengthen the:

- a) Production of the firm
- b) Management of the firm
- c) Profit share of the firm
- d) Manpower of the firm

25. Which of the following is not the mode of dissolution of a firm under voluntary dissolution?

- a) Dissolution by agreement
- b) Dissolution on the happenings of certain contingencies
- c) Dissolution on becoming a partner of unsound mind
- d) Compulsory dissolution

26. Intimation of the reconstitution of change in a registered partnership is to be given to the Registrar of firms:

- a) No time limits

QUESTION BANK

CA AKASH AGARWAL

DA, 1932

- b) Within 30 days
- c) Within 60 days
- d) Within 90 days

27. The liability of the partners will continue for the acts done before the dissolution, even after the dissolution, until:
- a) Public notice is given of the dissolution
 - b) Partners are getting the final payment
 - c) Claim is demanded by the creditors
 - d) The death of partners
28. The mutual rights & duties of partners of a firm may be determined by:
- a) Partner's will
 - b) The Court of law
 - c) Contract entered between the partners
 - d) The senior partner in the firm

Q2. True or False

1. Consideration, which is of essence for the formation of a contract, is essential for the formation of the partnership.
2. The goodwill shall, subject to contract between the partners, be included in the assets and it may be sold either separately or along with other property of the firm.
3. Debts of the firm shall be paid first out of the property of the firm, but in case of private debts of the partners, it shall be paid last after paying of all the dues of the firm.
4. The implied authority of a partner is to carry on the business of the firm, in the usual way.
5. Subject to contract between the partners, the property of the firm includes acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, the goodwill of the business and all property and rights and interests in property originally brought into the stock of the firm.
6. Two persons agreed to produce a film and share the profits of hiring it out; it is not held to be sufficient to constitute a partnership.
7. Secret partner does not take active part in the management of the firm's business.
8. Secret partner contributes capital only & he does not take active part in management of the firm's business.

Q3. Fill in the Blanks

1. The partners in a firm may, by contract between the partners, restrict or extend the _____ authority of any partner.
2. When there is any change in the constitution of the firm, the status of the continuing guarantee given to the firm shall be _____ as to future transactions from the date of any change in the constitution of the firm.
3. The State Government may appoint Registrars of Firms for the purposes of this Act, every Registrar shall be deemed to be a _____ within the meaning of section 21 of the Indian Penal Code.
4. A firm may be dissolved by the Court order or in accordance with a _____ between the partners.
5. A person may be deemed as partner by estoppels or holding out when he by his _____ represents himself to be a partner in a firm.
6. In the case of banking business, the maximum number of legal partners is _____.
7. A nominal partner can be of two types Partner by estoppels and Partner _____.

ANSWERS

MCO	TRUE OR FALSE	FTB
1. <u>D</u>	1. FALSE	1. <u>IMPLIED</u>
2. <u>D</u>	2. TRUE	2. <u>REVOKED</u>
3. <u>C</u>	3. TRUE	3. <u>PUBLIC SERVANT</u>
4. <u>D</u>	4. TRUE	4. <u>CONTRACT</u>
5. <u>D</u>	5. TRUE	5. <u>CONDUCT</u>
6. <u>D</u>	6. FALSE	6. <u>10</u>
7. <u>C</u>	7. FALSE	7. <u>HOLDING OUT</u>
8. <u>B</u>	8. FALSE	
9. <u>D</u>		
10. D		
11. B		
12. D		
13. C		
14. A		
15. C		
16. A		

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



17. B		
18. A		
19. B		
20. B		
21. A		
22. B		
23. C		
24. B		
25. D		
26. B		
27. A		
28. C		

LIMITED LIABILITY PARTNERSHIP ACT, 2008

[PP, June 2013]

[4 Marks]

Q1. Write short note on: Annual Return.

Answer:

- As per Section 35 of Limited Liability Partnership Act, 2008, every Limited Liability Partnership (LLP) shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.
- The LLP having turnover up to 5 crores or contribution up to 50 lakhs during the corresponding financial year shall file annual return accompanied with certificate signed by designated partner stating that the return contains true & correct information.
- The LLP having turnover more than 5 crores or contribution more than 50 lakhs during the corresponding financial year shall file annual return accompanied with certificate signed by Company Secretary in practise stating that the return contains true & correct information & he has verified the particulars from books & records of LLP.
- Any LLP which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than 5000 but which may extend to 1 lakh.

[MTP, Dec 2017]

[10 Marks]

Q2. Explain in details the term 'designated partners' under LLP Act, 2008.

Answer:

- "Designated partner" in reference to Limited Liability Partnership means any partner designated as such pursuant to section 7 of Limited Liability Partnership Act 2008. Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. In case if no partner is designated as such, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner of the LLP.
- Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



- An individual cannot become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed and he is also required to obtain a Designated Partner Identification Number (DPIN).
- The role of Designated Partners in case of LLP is on same footage as of Directors in case of Company. The Designated Partners as provided under Section 8 are directly responsible for the compliances of all provisions provided under LLP Act, 2008 and the provisions specified in the LLP Agreement.
- Rights of Designated Partner are same as of other Partners. Alike other partners they are not entitled to any remuneration for their participation in management of LLP unless otherwise specifically provided in the LLP Agreement they, yet they have additional responsibilities to comply with.

A designated partner shall be:

- a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and
- b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.
- c) Major duties of Designated Partner
 - Notify any changes in the LLP's to Registrar of Companies.
 - Notify any changes in the Partners names & residential addresses to Registrar of Companies.
 - Notify any change in Registered Office Address to Registrar of Companies.
 - Filing of any Annual return, Statement of Accounts and other documents specified under the provisions of LLP Act with the Registrar of Companies.
 - Statement of Accounts & Solvency to be signed by the Designated Partners of the Company.
 - to preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power
 - Responsible for signing all the e-forms filed with the Registrar of Companies.
 - Any vacancy arising in the office of Designated Partner shall be filled within 30 days and the change shall be intimated to the Registrar of Companies

[PP. June 2015]

[3 Marks]

Q3. Explain the extent of Liability of Limited Liability Partnership under section 26 of LLP Act.

Answer:

- As per Section 26 of Limited Liability Partnership, 2008, every partner of LLP is agent of LLP but not of other partners.
- As per Section 27 of Limited Liability Partnership, 2008, LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of LLP or with its authority.
- An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.
- The liabilities of LLP shall be met out of the property of the LLP.

The LLP shall not be liable for anything done by a partner in a dealing with a particular person if:

- The partner in fact has no authority to act for the LLP in doing a particular act; and
- The person knows that he has no authority or does not know or believe him to be a partner of the LLP.

[PP. June 2017]

[7 Marks]

Q4. Explain provisions relating to unlimited liability in case of fraud under LLP Act.

Answer:

- In order to check the misuse of corporate veil by a LLP for the purpose of defrauding the creditors or any other person or for any fraudulent purpose the liability of the LLP & the partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.
 - If any such act is carried out by a partner, then the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the limited liability partnership.
 - Where the business of a LLP is carried out for fraudulent purpose every person who was knowingly been a party to the carrying on of the business in the manner aforesaid shall be punishable with:
 - Imprisonment for a term which may extend to 2 years &
 - Fine; this shall not be less than 50000 but which may extend to ₹5 lakhs.
- Moreover, the LLP & any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

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CA AKASH AGARWAL

LLP, 2008



[PP, Dec 2019]

[9 Marks]

Q5. Discuss the procedure of private company into limited liability partnership.

Answer:

- The procedure of conversion from private limited company into LLP is discussed as under:
- As per Para 1(b) of the 3rd Schedule, 'convert' in relation to a private company converting into a LLP means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the 3rd Schedule.
- A company may apply to convert itself into a LLP if and only if -
 - There is no security interest in its assets subsisting or in force at the time of application; and
 - The partners of the LLP to which it converts comprise all the shareholders of the company only and no one else.
 - Upon the conversion of a private company into an LLP, the company and its shareholders, the LLP and the partners of the LLP shall be bound by the provisions of this schedule that are applicable to them.
- The company shall apply to the Registrar by filing the following documents:
 - A statement by all its shareholders in Form No.18 and fees containing the following particulars:
 1. The name and registration number of the company;
 2. The date on which the company was incorporated; and
 - Incorporation document and statement;
 - On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made thereunder.
 - The Registrar may require the documents to be verified as he considers fit.
 - The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is incorporated & registered, on and from the date specified in the certificate.
 - The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees.
 - If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register.
 - An appeal may be made before the Tribunal against rejection order.

[MTP, June 2020]

[7 Marks]

Q6. Discuss the procedure for conversion from a firm into an LLP.

Answer:

- Conversion of firm into LLP Para 1(a) of the second schedule defines the term 'firm' as a firm as defined in Section 4 of the Indian Partnership Act, 1932. Para 1(b) defines the term 'convert' in relation to a firm converting into a LLP as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to LLP.
- A firm may convert into a LLP on the condition that the partners of the firm shall be bound by the provisions of the second schedule that are applicable to them. A firm may apply to convert into a LLP if and only if the partners of the LLP into which the firm is to be converted, comprise all the partners of the firm. Except the partners in the partnership no other person will be allowed to be a partner in LLP after its conversion.
- A firm may apply to the Registrar by filing-
 1. A statement by all of its partners in Form No. 17 and accompanied by fee containing the following particulars-
 - the name and registration number, if applicable, of the firm; and
 - the date on which the firm was registered under the Indian Partnership Act, 1932 or under any other law, if applicable; and
 - Incorporation document and statement.
- On receipt of the above said documents, the Registrar shall register the documents and issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under the Act.
- The Registrar may require the documents to be verified in such manner, as he considers fit. The LLP shall within 15 days of the date of the registration, inform the concerned Registrar of Firms with which it was registered under the provisions of Indian Partnership Act about the conversion and the particulars of the LLP.
- The Registrar may refuse registration if he is not satisfied with the particulars or other information furnished. In such cases appeal may be filed before the Tribunal.

[RTP, June 2018]

Q7. State the duties of a LLP Liquidator. Would his accounts be audited?

Answer:

- Rule 13 provides that on appointment of a LLP liquidator, all the powers of the designated partner and other partner, if any, shall cease, except for the purpose of giving notice of such appointment of the LLP liquidator to the Registrar. Rule 14 prescribes the following duties -
 - He shall settle the list of creditors or partners, which shall prima facie evidence of the liability of the persons therein to the creditors or partner;

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



- He shall obtain approval of partners or creditors for any purpose he may consider necessary;
- He shall maintain register and proper books of accounts in the form and manner as specified;
- He shall the debts of the LLP and shall adjust the rights of the partners among themselves;
- He shall observe due care and diligence in the discharge of duties.
- Audit of LLP liquidator's account - Rule 15 provides that the accounts of the LLP liquidator shall be audited.
- Supervision of winding up - Rule 16 provides that the partners or the creditors may appoint such committees as they consider appropriate to supervise the voluntary winding up and assist the LLP liquidator in discharging the functions.
- The LLP liquidator shall report quarterly on the progress of the winding up of the LLP in Form No. 8 to the partners or creditors which shall be made before the end of the following quarter. Where the fraud is reported against any person other than a partner or designated partner, the LLP liquidator, before sending a report to the Tribunal, may intimate it to the partners or designated partners and include their views in the report.
- The Tribunal is having power to make any order to transfer the winding up proceedings from voluntary winding up to compulsory winding up by Tribunal.

[PP. June 2016 & MTP Dec.2017 & June 2018]

[5 Marks]

Q8. Limited Liability Partnerships are body corporate. Do you agree? Justify.

Answer:

LLP formed and registered under Limited Liability Partnership Act, 2008 are body corporate.

All LLPs have the following features:

- A LLP is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
- A LLP shall have perpetual succession.
- Any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.
- Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.
- Any individual or body corporate may be a partner in a LLP.

It can be said that LLP is with body partnership who is wearing clothes of company.

[PP. Dec 2013, Dec 2015, Dec 2016, & MQP Dec 2023]

[7 Marks]

Q9. What are the circumstances in which Limited Liability Partnership may be wound up by Tribunal? OR

List the circumstances under which an LLP formed under the Limited Liability Partnership Act, 2008 may be wound up by tribunal. OR

Demonstrate the circumstances in which Limited Liability Partnership may be wound up by Tribunal?

Answer:

As per Section 64 of Limited Liability Partnership Act, 2008, these are the circumstances in which a limited liability of partnership may be dissolved by Tribunal:

- If the LLP decides that limited liability partnership be wound up by the Tribunal;
- If, for a period of more than 6 months, the number of partners of LLP is reduced below 2;
- If the LLP is unable to pay its debts;
- If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public-order;
- A petition by LLP or its partners, creditors, Registrar, person authorized by CG is filed;
- If the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
- If the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

[PP. Dec 2017]

[10 Marks]

Q10. Discuss, in brief, rules for Voluntary winding up and dissolution of a LLP.

Answer:

As per Section 65 of LLP Act, 2008, CG has power to make rules for dissolution and winding up of a LLP.

Voluntary winding up:

- Rule 4 provides that the winding up of an LLP may be either voluntary or by the Tribunal. It shall be deemed to commence on the date of passing of the resolution for voluntary winding up.
- The LLP may be wound up voluntarily if the LLP passes a resolution to wind up the LLP with the approval of at least three fourths of the total number of its partners.
- If the LLP has creditors, whether secured or unsecured, the approval of such creditors is to be obtained for the voluntary winding up.
- A copy of the resolution shall be filed with the Registrar within 30 days of passing resolution in Form No. 1.
- Rule 7 provides that in case of voluntary winding up the majority of its designated partners, not being less than two, shall make a declaration in Form No. 2 verified by an affidavit to the effect that the LLP has no debt or that it will be able to pay its debts in full within such period

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



as may be specified in the declaration, but **not exceeding one year** from the commencement of the winding up:

- The **declaration shall be delivered to the Registrar in Form No. 3 within 15 days immediately preceding the date of passing** of the resolution for winding up of LLP.
 - The declaration shall be **accompanied by a statement of assets and liabilities in Form No. 4** for the period commencing from the date up to which the last account was prepared and ending with the latest practicable date immediately before the making of the declaration duly attested by at least two designated partners.
 - The declaration shall also be accompanied by a report of the valuation of the assets of the LLP prepared by a valuer, if there are any assets.
- **Meeting of creditors shall be convened** where the **two thirds in value of creditors** give their **consent that the winding up** in the interest of all partners and creditors, the **LLP shall within 14 days thereafter, file an application** before the Tribunal for winding up.
- The **LLP shall within 14 days of the receipt of the creditors' consent, give notice** of the resolution by **advertisement in a newspaper**.
- The **LLP shall within 30 days of passing of resolution** of voluntary winding up **appoint a voluntary liquidator** as LLP liquidator and this would be effective only after it is approved by two thirds of the creditors in value of the LLP.
- If **no liquidator is appointed** the Tribunal may appoint an **LLP liquidator on such remuneration** as may be determined by it.

[MQP, Dec 2024]

[7 Marks]

Q11. Demonstrate the procedure relating to winding up of an LLP by the tribunal.

Answer:

Winding up of a Limited Liability Partnership (LLP) by a Tribunal can be initiated for several reasons:

- Voluntary Winding Up:** The **LLP decides to wind up** and consents to the process.
- Insufficient Number of Partners:** The LLP has **fewer than two partners for six months**. An LLP requires at least two partners to operate legally.
- Inability to Pay Debts:** The LLP is **financially insolvent and cannot meet its debt obligations** or public order.
- Activities against National Interest:** The LLP engages in **activities detrimental to the sovereignty, integrity of India, the state's security**.
- Non-compliance with Statutory Filings:** The LLP **fails to file the Statement of Accounts and Solvency or Annual Returns with the Registrar for five consecutive financial years**, indicating a lack of operational transparency and regulatory compliance.
- Just and Equitable Grounds:** The Tribunal determines that it is **just an equitable** for the LLP to be wound up. This broad and subjective criterion can encompass various situations the Tribunal deems as warranting winding up for fairness or other reasons. When a Tribunal

initiates the winding-up process for an LLP based on these grounds, it marks the beginning of a formal procedure to dissolve the LLP.

Procedure for winding up of an LLP by a Tribunal:-

The procedure for winding up an LLP by a Tribunal involves several steps to ensure an orderly and fair dissolution of the LLP. Here's an overview of the process:

Step 1: Petition for Winding Up

The process begins with **filing a petition for winding up to the Tribunal**. This petition can be filed by the LLP itself, creditors, partners, or, in certain cases, by the Registrar or by a person authorized by the Central Government.

Step 2: Tribunal's Decision to Wind Up

Upon receiving the petition, the **Tribunal will consider the reasons for winding up**. If the Tribunal finds sufficient grounds per the LLP Act's provisions, it will pass a winding-up order.

Step 3: Appointment of Liquidator

Once the winding-up order is passed, the **Tribunal will appoint a Liquidator**. The role of the Liquidator is crucial, as they are responsible for managing the entire winding-up process, including the liquidation of assets.

Step 4: Public Announcement:

The Liquidator must **publicly announce the winding up**, inviting claims from creditors and instructing debtors to settle their dues.

Step 5: Settlement of Claims:

The Liquidator will then proceed to **settle the claims of creditors as prescribed by the law**. This includes verifying the claims and deciding the order for the debts to be paid.

Step 6: Liquidation of Assets:

The Liquidator will liquidate the LLP's **assets to generate funds to pay off the LLP's debts**. This could involve selling off property, machinery, intellectual property, etc.

Step 7: Distribution of Assets:

After paying off the debts. If there are any **remaining assets, they are distributed among the partners of the LLP** according to the agreement in the LLP deed or the LLP Act if the deed does not specify the distribution.

Step 8: Dissolution of LLP:

Once all debts have been paid, and the remaining assets have been distributed, **the Liquidator will apply to the Tribunal for the dissolution of LLP firm**. After ensuring that all procedures have been correctly followed, the Tribunal will pass an order to dissolve the LLP.

Step 9: Filing of Order with Registrar:

The order of dissolution issued by the Tribunal **must be filed with the Registrar** by the Liquidator within a specified period. The **Registrar will then publish a notice declaring the LLP to be dissolved**.

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



[PP DEC. 2023]

[8 Marks]

Q12. A Limited Liability Partnership wants to shift its registered office from Chennai in the State of Tamil Nadu to Bangalore in the State of Karnataka. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008?

Answer:

- Sec 13 of the LLP Act states that a Limited Liability Partnership may change the place of its registered office and file the notice of such change with the Registrar in form 15 within 30 days.
- Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement,
- If the agreement is silent then consent of all partners shall be required for changing the place of registered office of Limited Liability Partnership to another place,
- Where the change in place of registered office is from one State to another State, the Limited Liability Partnership having secured creditors shall also obtain consent of such secured creditors.
- Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office.
- However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the Limited Liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office.
- With a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted.
- Failure to comply with the provision of this section the Limited Liability Partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

EXTRA QUESTIONS

Q13. Who may be a partner in LLP?

Answer:

Section 5 provides that any individual or body corporate may be a partner in a LLP. The expression 'body corporate' is defined under Section 2(1)(d) of the Act as a company as defined in Section 3 of the Companies Act, 1956 and includes-

- a limited liability partnership registered under the Act;
- a limited liability partnership incorporated outside India; and
- a company incorporated outside India;

but does not include-

- a corporation sole;
- a co-operative society registered under any law for the time being in force; and
- any other body corporate, not being a company, or a LLP, which the Central Government may, by notification in the Official Gazette, specify in this behalf.

An individual shall not be capable of becoming a partner of LLP, if-

- he has been found to be of unsound mind by a Court of competent jurisdiction and the findings is
- in force.
- he is undischarged insolvent; or
- he has applied to be adjudicated as an insolvent and his application is pending.

Q14. Audit of accounts

Answer:

1. Rule 24(3) provides that the accounts of every LLP shall be audited. If the turnover of a LLP does not exceed, in any particular year Rs. 40 lakhs, or whose contribution does not exceed Rs. 25 lakhs shall not be required to get its accounts audited.
2. But if the partners of such LLP wants to get the accounts audited the same shall be audited in accordance with the rules.
3. If they decide not to audit, then the Statement of Account and Solvency shall include a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the requirements of the Act and the Rules with respect to preparation of books of account and a certificate in the Form No.8.

Q15. Preservation of records

Answer:

1. The following records are to be preserved permanently:
 - a) incorporation document;

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



- b) notice of situation of registered office;
- c) information with regard to LLP agreement or any change made therein;
- d) notice of other address of any LLP partnership at which documents to be served.
2. The following documents are to be preserved for 21 years:-
- all papers, registers, refund orders and correspondence relating to the LLP liquidation accounts; The following documents are to be preserved for 5 years:-
 - copies of Government orders relating to LLP;
 - registered documents of LLP which have been fully wound up and finally dissolved together with
 - the correspondence relating to such LLP;
 - papers relating to legal proceedings from the date of disposal of the case and appeal; if any;
 - copies of statistical returns furnished to Government;
 - all correspondences including correspondences relating to scrutiny of accounts, annual returns, prosecutions, reports to the Central Government and the Tribunal and the correspondences relating to complaints;
 - Statement of compliance with the requirements of the Act by an Advocate or Company Secretary or Chartered Accountant or Cost Accountant in while time practice and by any person who subscribed his name to the incorporation document;
 - Notice of a person ceasing to be a partner and any change in the name or address of a partner;
 - Registered documents relating to LLP struck off under Section 75 together with correspondence or copy of the order of restoration of the LLP into the register;
 - Annual Return of a LLP;
 - Consent of candidate to act as designated partner to be filed with the Registrar;
 - Consent to act as a partner;
 - Statement by all the partners of firm containing particulars of firm along with application for its conversion into LLP;
 - Statement by all shareholders containing particulars of private company/unlisted company along with the application for its conversion into LLP;
 - Certified copy of the order(s) of the Tribunal under Section 60/61/62;
 - Copy of the order of dissolution of LLP by Tribunal;
 - Statement of Account and Solvency;
- In case of prosecution matter, the date is to be recorded from the date of disposal of the case appeal, if any.
- The following records to be preserved for three years:-
- All books, records and papers, other than those specified above;
 - Routine correspondence regarding payment of fees, additional filing fees and correspondences about the return of documents

Q16. Comment on the following based on legal Provisions (no marks for wrong reasons justification) All the members of a limited partnership firm are "designated members"

Answer:

Designated partners: According to Section 7 of Limited Liability Partnership Act, 2008.

(1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such body corporate shall act as designated partners.

(2) Subject to the provisions of sub-section (1)-

I. if the incorporation document-

a. specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

b. states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

II. any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

(3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

Q17. State the essential elements to incorporate LLP

Answer:

Essential elements to incorporate LLP: Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

1. To complete and submit incorporation document in the form prescribed with the Registrar electronically;
2. To have at least two partners for incorporation of LLP [Individual or body corporate];
3. To have registered office in India to which all communications will be made and received;
4. To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.
5. A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



6. 10 execute a partnership agreement between the partners, inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.

7. LLP Name.

Limited Liability Partnerships are bodies corporate and must be registered with the Registrar of LLP after following the provisions Specified in the LLP Act, in a similar way of setting up a company with distinct name. The LLP cannot have the same name with any other LLP Partnership Firm or Company"

Q18. Briefly explain the process of incorporation of LLP.

Answer:

Process of incorporation/ formation of LLP:

Step:1 Deciding Partners and Designated partners.

Step:2 Obtaining DPIN and Digital Signature Certificates (DSC)

Step:3 Checking the Availability of Name [up to 6 choices can be indicated].

Step:4 Drafting of LLP Agreement.

Step:5 Electronic Filing of some Documents.

Step:6 Issuing Certificate of Incorporation along with LLPIN (Limited Liability Partnership Identification Number).

Q19. Mention the contents of LLP agreement.

Answer:

Contents of LLP Agreement:

1. Name of LLP.

2. Name & address of Partners & Designated Partners.

3. Form of contribution & interest on contribution.

4. Profit sharing ratio.

5. Remuneration of Partners

6. Rights & Duties of Partners

7. Proposed Business

8. Rules for governing LLP.

Q20. Which forms are required to be submitted for incorporation of LLP and LLP agreement?

Answer:

Incorporate LLP to:

- After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).
- e-Form 2 contains the details of LLP proposed to be incorporated, partners'/designated partners' details and consent of the partners/designated partners to act as partners/designated partners.

LLP Agreement for:

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

Q21. For any contravention of provisions of the LLP Act or LLP agreement, all the partners of LLP are liable for all penalties. Offer your views based on Limited Liability Partnership Act, 2008

Answer:

False it is the designated partner who is responsible for doing all acts matters and things as are required to be done by LLP as per the Act or as specified in the LLP agreement, Unless expressly provided otherwise in this Act, a designated partner shall be responsible for doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Q22. Explain the concept of 'whistle blowing' with respect to the Limited Liability Partnership Act 2008.

Answer:

The person who exposes any wrongdoing within an organization in hope of stopping it is called a whistle blower:

As per Section 31 of Limited Liability Partnership Act, 2008, the Court or Tribunal may reduce or waive any penalty imposed on any partner or employee of a LLP, if it is satisfied that:

- Such partner or employee of a LLP has provided useful information during investigation of such LLP; or

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



- When any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided by him

Q23. For any contravention of provisions of the LLP Act or LLP agreement, all the partners of LLP are liable for all penalties. Offer your views based on Limited Liability Partnership Act, 2008

Answer:

It is the designated partner who is responsible for doing all acts matters and things as are required to be done by LLP as per the Act or as specified in the LLP agreement.

Unless expressly provided otherwise in this Act, a designated partner shall be responsible for doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of this Act including filing of any document, return, statement, and the like report pursuant to the provisions of this Act and as may be specified in the LLP agreement.

But all the partners are liable to penalties imposed on the LLP for any contravention of those provisions.

Q24 Discuss the procedure of conversion from private limited company into limited liability partnership

Answer:

The procedure of conversion from private limited company into LLP is discussed as under:

As per Para 1(b) of the 3rd Schedule, 'convert' in relation to a private company converting into a LLP means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the 3rd Schedule.

A company may apply to convert itself into a LLP if and only if -

- There is no security interest in its assets subsisting or in force at the time of application; and
- The partners of the LLP to which it converts comprise all the shareholders of the company only and no one else.

Upon the conversion of a private company into an LLP, the company and its shareholders, the LLP and the partners of the LLP shall be bound by the provisions of this schedule that are applicable to them.

- The company shall apply to the Registrar by filing the following documents:

- A statement by all its shareholders in Form No. 18 and fees containing the following particulars:

The name and registration number of the company;

The date on which the company was incorporated; and

- Incorporation document and statement;

On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made thereunder.

The Registrar may require the documents to be verified as he considers fit.

The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is incorporated & registered, on and from the date specified in the certificate.

The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees.

If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register.

An appeal may be made before the Tribunal against rejection order

Q25. Discuss the procedure for conversion of unlisted public company to limited liability company.

Answer:

The procedure of conversion from unlisted public limited company into LLP is discussed as under:

As per Para 1(b) of the 4th Schedule, 'convert' in relation to a company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the LLP in accordance with the provisions of the schedule.

As per Para 1(c) listed company means a company as defined u/s 11 of SEBI Act, 1992, which defines as a company which has any of its securities offered through an offer document listed on a recognized stock exchange and also includes Public Sector Undertakings whose securities are listed on a recognized stock exchange.

As per Para 1(d), unlisted company means a company which is not a listed company.

A company may apply to convert itself into a LLP if and only if -

- There is no security interest in its assets subsisting or in force at the time of application; and
- The partners of the LLP to which it converts comprise all the shareholders of the company only and no one else.

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



Upon the conversion of a private company into an LLP, the company and its shareholders, the LLP and the partners of the LLP shall be bound by the provisions of this schedule that are applicable to them.

➤ The company shall apply to the Registrar by filing the following documents:

- A statement by all its shareholders in Form No. 18 and fees containing the following particulars:

The name and registration number of the company;

The date on which the company was incorporated; and

- Incorporation document and statement;

➤ On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made thereunder.

The Registrar may require the documents to be verified as he considers fit.

➤ The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is incorporated & registered, on and from the date specified in the certificate.

➤ The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees.

➤ If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refuse to register.

An appeal may be made before the Tribunal against rejection order

Q26. Partnership Firm can convert is LLP? If yes then please discuss the procedure

Answer:

Conversion of firm into LLP Para 1(a) of the second schedule defines the term 'firm' as a firm as defined in Section 4 of the Indian Partnership Act, 1932. Para 1(b) defines the term 'convert' in relation to a firm converting into a LLP as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to LLP.

A firm may convert into a LLP on the condition that the partners of the firm shall be bound by the provisions of the second schedule that are applicable to them. A firm may apply to convert into a LLP if and only if the partners of the LLP into which the firm is to be converted, comprise, all the partners of the firm. Except the partners in the partnership no other person will be allowed to be a partner in LLP after its conversion.

A firm may apply to the Registrar by filing-

- A statement by all of its partners in Form No. 17 and accompanied by fee containing the following particulars-

- the name and registration number, if applicable, of the firm; and

- the date on which the firm was registered under the Indian Partnership Act, 1932 or under any other law, if applicable; and

- Incorporation document and statement.

On receipt of the above said documents, the Registrar shall register the documents and issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under the Act. The Registrar may require the documents to be verified in such manner, as he considers fit. The LLP shall within 15 days of the date of the registration, inform the concerned Registrar of Firms with which it was registered under the provisions of Indian Partnership Act about the conversion and the particulars of the LLP. The Registrar may refuse registration if he is not satisfied with the particulars or other information furnished. In such cases appeal may be filed before the Tribunal

Q27. A LLP wants to shift its registered office from Udaipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow?

OR

A limited liability partnership wants to shift its registered office from Mumbai in the State of Maharashtra to Kolkata in the State of West Bengal. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008?

Answer:

As per Section 13(1) of Limited Liability Partnership, 2008, every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

As per Section 13(3) of Limited Liability Partnership, 2008, a LLP may change the place of its registered office and file the notice of such change along with fees to the Registrar in Form No. 15 within 30 days in case the change is from within the same State or to different State.

The change shall be as per procedure laid in agreement. If there is no such procedure, then consent of all partners shall be required.

The LLP having secured creditors shall also obtain consent of such secured creditors.

Where the change in place of registered office is from one State to another State, the LLP shall publish a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the LLP is situated and circulating in that district giving notice of change of registered office.

However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar, the LLP shall file the notice in Form 15 with the Registrar from where the LLP proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



Q28. Discuss, in brief, rules for winding up and dissolution of a LLP.

Answer;

As per Section 65 of LLP Act, 2008, CG has power to make rules for dissolution and winding up of a LLP.

Voluntary winding up:

Rule 4 provides that the winding up of an LLP may be either voluntary or by the Tribunal. It shall be deemed to commence on the date of passing of the resolution for voluntary winding up.

The LLP may be wound up voluntarily if the LLP passes a resolution to wind up the LLP with the approval of at least three fourths of the total number of its partners.

If the LLP has creditors, whether secured or unsecured, the approval of such creditors is to be obtained for the voluntary winding up.

A copy of the resolution shall be filed with the Registrar within 30 days of passing resolution in Form No. 1.

Rule 7 provides that in case of voluntary winding up the majority of its designated partners, not being less than two, shall make a declaration in Form No. 2 verified by an affidavit to the effect that the LLP has no debt or that it will be able to pay its debts in full within such period as may be specified in the declaration, but not exceeding one year from the commencement of the winding up:

- The declaration shall be delivered to the Registrar in Form No. 3 within 15 days immediately preceding the date of passing of the resolution for winding up of LLP.
- The declaration shall be accompanied by a statement of assets and liabilities in Form No. 4 for the period commencing from the date up to which the last account was prepared and ending with the latest practicable date immediately before the making of the declaration duly attested by at least two designated partners.
- The declaration shall also be accompanied by a report of the valuation of the assets of the LLP prepared by a valuer, if there are any assets.

Meeting of creditors shall be convened where the two thirds in value of creditors give their consent that the winding up is in the interest of all partners and creditors, the LLP shall within 14 days thereafter, file an application before the Tribunal for winding up.

The LLP shall within 14 days of the receipt of the creditors' consent, give notice of the resolution by advertisement in a newspaper.

The LLP shall within 30 days of passing of resolution of voluntary winding up appoint a voluntary liquidator as LLP liquidator and this would be effective only after it is approved by two thirds of the creditors in value of the LLP.

If no liquidator is appointed the Tribunal may appoint an LLP liquidator on such remuneration as may be determined by it.

Q29. Mr. X was appointed as a partner of an LLP but after just 3 months he was declared undischarged insolvent. Can he continue as a partner because he was solvent when he was appointed as a partner? Justify your answer with reference to the relevant provisions of the applicable Act.

Answer;

Section 5 of LLP Act 2008 provides that any individual or body corporate may be a partner in a LLP. An individual shall not be capable of becoming a partner of LLP, if

- he has been found to be of unsound mind by a Court of competent jurisdiction and the findings is in force.
- he is undischarged insolvent; or
- he has applied to be adjudicated as an insolvent and his application is pending

So, Mr. X cannot continue as a partner because he is undischarged insolvent. As per act he is not capable or eligible a partner of LLP

Q30. A LLP wants to shift its registered office from Chennai in the State of Tamil Nadu to Bengaluru in the State of Karnataka. What procedure the corporate has to follow under LLP Act, 2008?

Answer:

As per Section 13(3) of Limited Liability Partnership Act, 2008 read with Rule 17 of LLP Rules, 2009:

1. Hold partners meeting:

A meeting shall be held by the partners mentioned in the agreement along with the designated partners for passing resolution for shifting the office & obtaining the consent from all.

2. Consent of secured creditor:

The consent of all creditors shall be obtained for same after preparing the list of creditors.

3. Publish notice in newspaper:

The firm shall publish a general notice not less than 21 days before filing any notice with Registrar, in daily newspaper in English & in principal language of district in which the firm is situated stating the change of State.

4. File Form 15:

This form shall be submitted with Registrar of Companies of the State in which the firm is situated within 30 days of obtaining consent of all partners. A duplicate shall be sent to Registrar of proposed State.

Execution of supplementary agreement:

5. A supplementary agreement of original partnership agreement shall be prepared as per Stamp Act of the respective State.

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



Q31. A limited liability partnership wants to shift its registered office from Mumbai in the State of Maharashtra to Kolkata in the State of West Bengal. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008?

Answer;

Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors. Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

Q32. A LLP wants to shift its registered office from Chennai in the State of Tamil Nadu to Bengaluru in the State of Karnataka. What procedure the corporate has to follow under LLP Act, 2008?

Answer:

As per Section 13(3) of Limited Liability Partnership Act, 2008 read with Rule 17 of LLP Rules, 2009:

1. Hold partners meeting:

A meeting shall be held by the partners mentioned in the agreement along with the designated partners for passing resolution for shifting the office & obtaining the consent from all.

2. Consent of secured creditor:

The consent of all creditors shall be obtained for same after preparing the list of creditors.

3. Publish notice in newspaper:

The firm shall publish a general notice not less than 21 days before filing any notice with Registrar, in daily newspaper in English & in principal language of district in which the firm is situated stating the change of State.

4. File Form 15:

This form shall be submitted with Registrar of Companies of the State in which the firm is situated within 30 days of obtaining consent of all partners. A duplicate shall be sent to Registrar of proposed State.

Execution of supplementary agreement:

5. A supplementary agreement of original partnership agreement shall be pre- pared as per Stamp Act of the respective State.

[MTP DEC 23]

[7 MARKS]

Q33. Recommend the provisions that should be complied with a liquidator in a case where the Tribunal has made a winding up order a case for LLP. Refer to the related the legal and regulatory provisions wherever necessary.

Answer;

Petition for winding up Rule 26 provides that an application to the Tribunal for the winding up of an LLP shall be by a petition presented by

- the LLP or any of its partner or partners;
- any secured creditor or creditors, including any contingent or prospective creditor the Registrar; or
- any person authorized by the Central Government in this behalf;
- the Central Government, in a case falling under Section 64(d).

A petition filed by the LLP or any of its partner or partners for winding up before the Tribunal shall admitted only if accompanied by a statement of affairs of the LLP on the date of petition and a resolution of three fourths of total number of partners. The Registrar shall not a present a petition on the ground that the LLP is unable to pay its debts unless it appears to him either from financial condition of the LLP as disclosed in its Statement of Accounts and Solvency or from the report of an Inspector that the LLP is unable to pay its debts. Further the Registrar shall obtain then previous sanction of the Central Government to the presentation of a petition.

The Central Government shall not accord its sanction for presentation of petition unless the LLP concerned has been given a reasonable opportunity of making representations, if any.

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



Q34. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership" Explain.

Answer;

- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.
- Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.
- Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Q35. What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008?

Answer;

Maintenance of books of account, other records and audit, etc. (Section 34 of LLP Act, 2008):

- The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.
- Every LLP shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.
- Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed
- The accounts of LLP shall be audited in accordance with such rules as may be prescribed.

Q36. Explain the Small Limited Liability Partnership under the LLP Act, 2008.

Answer;

Small Limited Liability Partnership [Section 2(ta) of the LLP Act, 2008]:

It means a limited liability partnership

- the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed

Q37. Explain the Small Limited Liability Partnership under the LLP Act, 2008.

Answer;

Small Limited Liability Partnership [Section 2(ta) of the LLP Act, 2008]:

It means a limited liability partnership

- the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
- which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed

Q38. Write short notes on -

(a) Compounding of offences

(b) Report by Liquidator

Answer;

(a) Section 39 provides that the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine prescribed for the offence.

(b) Rule 34 provides that where the Tribunal has made a winding up order, the Liquidator shall, within 60 days from the date of winding up of the order, submit to the Tribunal, a report containing the following particulars -

- the nature and details of the assets, cash balance in hand and in bank, if any and the marketable securities, if any held by the LLP;
- amount of contribution received and outstanding from partners; the existing and contingent liabilities of LLP;
- debts due to the LLP;
- guarantees given by the LLP;

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



- Legal Entity Liability list of partners and dues if any payable by them and details of any outstanding contributions;
- details of intangible assets;
- details of subsisting contracts, joint ventures and collaborations, if any;
- details of other LLPs or companies in which LLP has any stake;
- details of legal cases filed by or against the LLP;
- Study Mat details of the properties, assets, books or records and other documents taken under the custody of the Liquidator;
- scheme of revival or rehabilitation of LLP, if any; and
- any other information which the Tribunal may direct or the Liquidator may consider necessary to include.

The Liquidator may make in the report, the viability of the business of the LLP or the steps which, in his opinion, are necessary for maximizing the value of the assets of the LLP

Q39. How does LLP differ from Traditional Partnership?

Answer:

Basis	Partnership	Limited Liability Partnership
Legal Entity	It is not a separate legal entity	It is a separate legal entity
Liability	The liability of the partners is unlimited.	The liability of the members of the LLP is limited
Number of Members	Minimum required is two. Maximum number is 50 subject to some exceptions	Minimum number of members for a LLP is 2 and no limit for maximum numbers
Entering into Contracts	Partnership is not a separate person and enter into contract on behalf of its partners	LLP is capable of entering into contracts and holding property in its own name
Compliance of law	Lesser compliance	More compliance under LLP Act
Dissolution	Firm can be dissolved on the eve of death of partner, retirement of partner etc., unless otherwise than agreed to in the agreement.	LLP can be dissolved by complying with the provisions of LLP (Winding up and Dissolution) Rules, 2012.

Q40. What are the essential documents required for LLP Registration?

Answer:

- The incorporation document shall be in LLP Form No. 2. According to Section 11(2) the incorporation document shall
 - State the name of the LLP;
 - State the proposed business of the LLP;
 - State the address of the registered office of the LLP
 - State the name and address of each of the persons who are to be partners of the LLP on incorporation;
 - State the name and address of the persons who are to be designated partners of the LLP on incorporation;
 - Contain such other information as may be prescribed
- The Statement in the prescribed form, made by either an Advocate or a Company Secretary or a Chartered Accountant or a Cost Accountant who is engaged in the formation of the LLP and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made there under have been complied with, in respect of 'incorporation and matters precedent and incidental thereto, is also to be furnished.

Q41. What are the advantages of an LLP.

Answer:

- The advantages of incorporating a limited liability partnership are the low amount of cost and less compliances involved in registering the same. Moreover, the statutory obligations of a company to rotate directors within the board, there is no such provision relating to rotation of partners
- It is an alternative corporate business form that gives the benefit of limited liability of a company and the flexibility of the partnership;
- It can continue its existence irrespective of changes in partners;
- It is capable of entering into contracts and holding property in its own name;
- It is a separate Legal entity and is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP
- No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct;
- It has flexible capital structure and also easy to dissolve

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



Q42. What are the advantages of an LLP.

Answer:

- The advantages of incorporating a limited liability partnership are the low amount of cost and less compliances involved in registering the same. Moreover, the statutory obligations of a company to rotate directors within the board, there is no such provision relating to rotation of partners
- It is an alternative corporate business form that gives the benefit of limited liability of a company and the flexibility of the partnership;
- It can continue its existence irrespective of changes in partners;
- It is capable of entering into contracts and holding property in its own name;
- It is a separate Legal entity and is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP
- No partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct;
- It has flexible capital structure and also easy to dissolve

		Members can be organizations, trusts, another business form or individuals.
Liability	Liability of a partners is limited to the extent of agreed contribution except in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them
Management	The business of the company managed by the partners including the designated partners authorized in the agreement	The affairs of the company are managed by board of directors elected by the shareholders.
Minimum number of directors /designated partners	Minimum 2 designated partners	Minimum Directors Pvt. Co. - 2 directors Public co. -3 directors

Q43. Discuss the difference between LLP & a Company.

Answer:

Basis	LLP	Companies
Regulation	The LLP Act, 2008	The Companies Act, 2013.
Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a Company is regulated by statute (i.e., Companies Act, 2013).
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/partners	Minimum -2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private Company Minimum -2 members Maximum 200 members Public company: Minimum -7 members Maximum - No such limit on the members.

QUESTION BANK

CA AKASH AGARWAL

LLP, 2008

OBJECTIVES

Q1. Multiple Choice Question

1. Which of the following is true about a Limited Liability Partnership?
 - a) A Limited Liability Partnership is not a distinct entity from its partners
 - b) A Limited Liability Partnership is a legal entity separate from its partners
 - c) A Limited Liability Partnership is a body corporate
 - d) Both b and c are correct
2. Which of the following is true about the number of designated partners required in a Limited Liability Partnership?
 - a) A Limited Liability Partnership can have at least two designated partners
 - b) A Limited Liability Partnership can have at least three designated partners
 - c) A Limited Liability Partnership can have at least seven designated partners
 - d) A Limited Liability Partnership can have at least four designated partners
3. What is the exact time limit under which a Limited Liability Partnership must file its annual return with the registrar?
 - a) A Limited Liability Partnership must file its annual return within 30 days from the closing of its financial year
 - b) A Limited Liability Partnership must file its annual return within 45 days from the closing of its financial year
 - c) A Limited Liability Partnership must file its annual return within 15 days from the closing of its financial year
 - d) A Limited Liability Partnership must file its annual return within 60 days from the closing of its financial year
4. Every Limited Liability Partnership must maintain its books of accounts diligently. Those books of accounts should maintain
 - a) Particulars of the receipts and expenditures at the Limited Liability Partnership with the details of those transactions
 - b) An inventory of the cost of goods purchased, work in progress, inventories, finished goods as well as the cost of goods sold
 - c) A complete record of the assets and liabilities of the Limited Liability Partnership
 - d) All of the above
5. As per Sale of Goods Act, this is not included
 - a) A Limited Liability Partnership should maintain its accounts at the branch office
 - b) A Limited Liability Partnership should maintain its accounts at the corporate office
 - c) A Limited Liability Partnership should maintain its accounts at the head office
 - d) A Limited Liability Partnership should maintain its accounts at the registered office
6. As per Sale of Goods Act, this is not included
 - a) A Limited Liability Partnership should maintain its books of accounts on the accrual basis
 - b) A Limited Liability Partnership should maintain its books of accounts on the cash basis
 - c) A Limited Liability Partnership should maintain its books of accounts based on the double-entry system of accounting
 - d) All of the above
7. A LLP shall file an annual return duly authenticated with the Registrar within ____ of closure of a financial year under Limited Liability Partnership Act, 2008
 - a) 30 days
 - b) 45 days
 - c) 60 days
 - d) 90 days
8. Power to exempt any LLP or class of LLP for audits of accounts is with
 - a) Inspector
 - b) CG
 - c) Any other regulatory authority
 - d) None of the above
9. Every LLP firm shall have at least ____ designated partners who are individuals
 - a) 2
 - b) 3
 - c) 4
 - d) 5
10. A partner may contribute to the LLP
 - a) Tangible or intangible property
 - b) Movable or immovable property
 - c) Money, promissory note etc
 - d) Any of the above

QUESTION BANK



CA AKASH AGARWAL

LLP, 2008



11. An individual shall give his consent to become a designated partner in

- Form 3
- Form 10
- Form 4
- Form 9

12. Any LLP may change its name by following the procedure as laid down in

- The Partnership Act
- The Rules for LLP
- The Form No.5
- The LLP Agreement

13. Every foreign LLP shall file with the Registrar the Statement of Accounts & Solvency in:

- Form 6
- Form 7
- Form 8
- Form 9

Q2. True or False

- It is correct that the provisions of Indian Partnership Act, 1932 are applicable to Limited Liabilities Partnership?
- Limited Liability Partnership should have a minimum paid up capital of 1,00,000.
- The partners of a LLP may remove an auditor from office at any time by following the procedure as laid down in the LLP agreement.
- In case of expulsion of a partner, the provisions of retired partners will be applicable to such expelled partner
- Section 65 provides that the CG shall appoint one or more Inspectors to investigate the affairs of a LLP.

Q3. Fill in the blanks

- Section 2 (d) of the LLP Act, 2008, defines ____.
- "Foreign limited liability partnership" means a limited liability partnership formed, incorporated or registered ____ India which establishes a place of business within India.
- A limited liability partnership is a ____ formed and incorporated under this Act and is a legal entity separate from that of its partners.
- An individual shall not be capable of becoming a partner of a limited liability partnership, if he has been found to be of ____ by a Court of competent jurisdiction and the finding is in force
- Every limited liability partnership shall have at least ____ partners

6. When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the ____ shall retain the incorporation document

7. The LLP shall inform the concerned Registrar within ____ of the date of registration about the conversion and the particulars of LLP

8. Only designated partners are liable to obtain unique identification number called as ____.

9. Any individual or ____ may be a partner in a limited liability partnership.

10. The liabilities of LLP shall be met out of the properties of ____ partners.

11. A LLP formed, incorporated or registered outside India which establishes a place of business within India is called ____.

12. Every foreign LLP shall file with the registrar of statements of accounts & insolvency is ____.

ANSWERS

MCQ	True/False	Fill in the Blanks
1. D	1. FALSE	1. BODY CORPORATE
2. A	2. FALSE	2. OUTSIDE
3. A	3. TRUE	3. BODY CORPORATE
4. D	4. TRUE	4. UNSOUND
5. B	5. FALSE	5. TWO
6. D		6. REGISTRAR
7. C		7. 15 DAYS
8. B		8. DESIGNATED PARTNER IDENTIFICATION NUMBER (DPIN)
9. A		9. DESIGNATED
10. D		10. DESIGNATED
11. D		11. FOREIGN LLP
11. B		12. FORM 8
12. C		

QUESTION BANK

CA AKASH AGARWAL

NEGO, 1981

NEGOTIABLE INSTRUMENTS ACT, 1881

EXAMINER'S QUESTIONS

[PP. Dec. 201, MQP June 2023]

[7 Marks]

Q1. Distinguish between bill of exchange and promissory note.

Answer:

	Bill of Exchange	Promissory Note
Number of Parties	3 Parties: Drawer, Drawee & Payee	2 Parties: Maker & Payee
Promise & Order	There is an <u>order to pay</u> .	There is a <u>promise to pay</u> .
Definition	As per section 5 of the Act, an instrument in writing containing and unconditional order, sign by the maker directing a certain person to pay a certain sum of money only to, all to the order of, a certain person or to the bearer of the instrument.	As per section 4 of the act, an instrument in writing (Not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or the order of, a certain person or to the bearer of the instrument.
Acceptance	Acceptance is <u>required</u> .	Acceptance is not <u>required</u> .
Liability	The <u>drawer</u> of a bill is <u>liable only when the drawer does not accept</u> the bill or pay the money due.	The <u>maker</u> of the promissory note is <u>primarily liable</u> on the instrument.
Relationship	A <u>drawer</u> stands in <u>immediate relationship with the acceptor</u> .	The <u>maker</u> of the promissory note stands in an <u>immediate relationship to the payee</u> .
Notice	In case of <u>non-acceptance or non-payment of a bill</u> of notice must be given to all persons liable to pay.	<u>No notice of dishonour</u> is required.
Protesting	<u>Foreign bill</u> of exchange <u>must not be protested</u> .	<u>Protesting is not necessary</u> .
Conditions	Bill may be <u>conditionally accepted</u> .	<u>No conditions shall be made</u> .

[PP. July. 2023]

[5 Marks]

Q2. Distinguish between holder and holder in due course.

Answer:

Holder	Holder in due course
Holder is <u>entitled to its own name</u> to process the <u>instrument</u> and the <u>amount there on</u> from parties involved.	Holder in due course <u>possesses</u> the instrument for <u>consideration before maturity and in good faith</u> .
<u>Title of the holder</u> is subject to <u>title of the transferor</u> .	Holder in due course gets a <u>better title than the transferor</u> .
Holder <u>may receive</u> the instrument <u>without consideration</u> .	Holder in due course always <u>receives the instrument for consideration</u> .
Holder <u>does not get certain privileges</u> available to the holder in due course.	Holder in due course always <u>gets privileges not available to holder</u> .

[MTP. Dec. 2019 & Dec 2022]

[7 Marks]

Q3. Difference between bill of exchange & cheque

Answer:

Bill of Exchange	Cheque
It is defined in <u>Sec. 5</u> of NI Act, 1881.	It is defined in <u>Sec. 6</u> of the NI Act, 1881.
There are three parties: ➤ Drawer. ➤ Drawee. ➤ Payee.	There are three parties: ➤ Drawer. ➤ Drawee. ➤ Payee.
Bills of exchange are <u>not crossed</u> .	Cheques <u>may be crossed</u> .
Generally <u>three days of grace</u> are given for the payment in case of a bill of exchange. However, this convenience is not allowed in case of bill of exchange payable on demand.	Immediate payment is required in case of cheque. <u>No grace days are allowed</u> .
<u>Anybody including banker may be a drawee</u> in case of bill of exchange.	The <u>drawee is always a banker</u> .
It must be <u>accepted before the acceptor</u> can be made liable upon it.	It requires immediate payment. It <u>does not require acceptance</u> of the maker. Thus the question of acceptance does not arise in case of cheque.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



Where a Bill of Exchange is <u>not paid</u> and not honoured, a <u>notice of dishonour</u> should be sent to the <u>drawer</u> to charge him.	Where a cheque is <u>dishonoured</u> , <u>Notice of Dishonour is not strictly necessary</u> . The banker can return the cheque with the memo " <u>Refer to Drawer</u> " which is a sufficient notice.
Statutory protection is not available.	Sec. 85 of the N.I Act, 1881 affords protection to bankers.
<u>Civil Liability</u> in case of dishonour of bill of exchange.	<u>Criminal liability</u> in case of dishonour of a cheque/bouncing of a cheque and is liable to be prosecuted under Sec. 138 of the N.I. Act, 1881.

[MTP. Dec. 2019 & Dec 2022]

[8 Marks]

Q4. Difference between promissory note and cheque

Answer:

PROMISSORY NOTE	CHEQUE
It is defined in Sec. 4 of NI Act, 1881.	It is defined in Sec. 6 of the NI Act, 1881.
There are two parties: ➤ Maker. ➤ Payee.	There are three parties: ➤ Drawer. ➤ Drawee. ➤ Payee.
If it is given a guarantee, then there will be a third person, who is called as Guarantor or Surety.	
Promissory note contains a <u>promise to pay</u> the <u>sum with interest</u> or without interest at a later date.	A cheque is <u>payable immediately</u> on demand <u>without any days of grace</u> .
Promissory note is <u>not crossed</u> .	Cheque <u>can be crossed</u> .
No <u>protection</u> is available to the payee of note.	Statutory <u>protection</u> is given to the drawee banker. (Sec. 128)
A promissory note <u>cannot be self drawn</u> .	A cheque <u>can be self drawn or bearer cheque</u> .
No <u>criminal liability</u> shall be imposed on the maker.	<u>Criminal Liability</u> may be imposed on drawee for the dishonor of cheques in certain circumstances.
Stamp is <u>necessary</u> .	Stamp is <u>not necessary</u> .
Limitation: 3 years.	Limitation: 6 months.

[PP. July 2023]

[6 Marks]

Q5. What are the different types of instruments mentioned in Negotiable Instruments Act 1881?

Answer:

Ans. Indian law denotes three instruments which can be called as negotiable instrument and are legally valid. These instruments are:

- Promissory note
- Bill of exchange
- Cheque

1. Promissory note: Section 4 of the Act defines the term 'promissory note' as an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

There are 2 parties: Maker & Payee.

Such instruments can also be negotiated when endorsed and delivered or be delivered only.

2. Bill of exchange: Section 5 of the Act defines the term 'bill of exchange' as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

There are 3 parties: Drawer, Acceptor & Payee.

3. Cheque: Section 6 of the Act defines the term 'cheque' as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

There are 3 parties: Drawer, Drawee (the Bank which has been instructed by the drawer, through the cheque to make the payment to the holder of the instrument which is the payee) & Payee.

[PP. Dec.2021]

[6 Marks]

Q6. Write short note on: Endorsement under Negotiable Instruments Act, 1881.

Answer:

- As per Section 15 of Negotiable Instruments Act, 1881,
 - When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation on the back or face thereof or on a slip of paper annexed thereto, or
 - So signs for the same purpose a stamped paper intended to be completed as negotiable instrument he is said to indorse the same.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1661



- Therefore, **endorsement (indorsement)** means writing of a person's name (other than maker) on the face or back of an instrument or on a slip of paper attached thereto for the purpose of negotiation.
- The **person signing** the instrument is known as **endorser** and the **person in whose favour** it is **endorsed** is known as **endorsee**.

[MTP, June 2018]

[7 Marks]

Q7. Short Note on Negotiable Instruments

Answer:

- Section 13 of the Act defines the terms 'negotiable instrument' as a promissory note, bill of exchange or a cheque either payable either to order or to bearer. A promissory note, bill of exchange or cheque-
 - is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;
 - is payable to the bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank;
 - either originally or by endorsement, is expressed to be payable to two or more payees jointly, or
 - it may be made payable in the alternative to one of two, or one or some of several payees.
- Section 13 shows that the Act is confined to three specific types of instruments most in common use, namely, promissory notes, bills of exchange and cheques. The Contract Act is a general statute dealing with contracts. The Negotiable instruments Act is a statute dealing with a particular form of the contract. The law laid down for special cases must always overrule the provisions of general character as held in 'Kwong Hip Lone Saw Mill Co. V.

C.A.M.A.L. Firms'

The following are not the negotiable instruments-

- share certificate passing from hand to hand with blank transfers -
- Deposit receipts
- Mate's receipt
- Bill of lading
- A benefit under a letter of credit

[MTP, Dec. 2018]

[6 Marks]

Q8. Short Note on Crossing

Answer:

- Section 123 provides that where a cheque bears across its face an addition of the words and company or any abbreviation thereof, between two parallel transverse lines, or of two parallel

transverse lines simply, either with or without the words not negotiable that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

- Section 124 provides that where a cheque bears across its face an addition of the name of a banker, either with or without the words not negotiable that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.
- Section 125 provides that where a cheque is not crossed, the holder may cross it generally or specially.
- Where a cheque is crossed generally, the holder may cross it specially;
- Where a cheque is crossed generally or specially, the holder may add the word not negotiable
- Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

[MTP, Dec. 2016]

[7 Marks]

Q9. Which are the essential elements of a valid acceptance of a bill of exchange? An acceptor accepts a Bill of Exchange' but writes on it 'Accepted but payment will be made when goods delivered to me is sold. Decide the validity

Answer:

- **Acceptance must be written:** The drawee may use any appropriate word to convey his assent. It may be sufficient acceptance even if just signatures are put without additional words. An oral acceptance is not valid in law.
- **Acceptance must be signed:** A mere signature would be sufficient for the purpose. Alternatively, the words 'accepted' may be written across the face of the bill with a signature underneath; if it is not so signed, it would not be an acceptance.
- **Acceptance must be on the bill:** The acceptance should be on the face of the bill normally but it is not necessary. An acceptance written on the back of a bill has been held to be sufficient in-law. What is essential is that must be written on the bill; else it creates no liability as acceptor on the part of the person who signs it.
- **Acceptance must be completed by delivery:** Acceptance would not be complete and the drawee would not be bound until the drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some person on his behalf.
- **Where a bill is drawn in sets, the acceptance should be put on one part only:** Where the drawee signs his acceptance on two or more parts, he may become liable on each of them separately
- **Acceptance may be either general or qualified:** An acceptance is said to be general when the drawee assents without qualification order of the drawer. The qualification may relate to an event, amount, place, time, etc.

Conclusion

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1001



- In given case, the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated. As a rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance.
- Where, he refuses to take it, the bill shall be dishonoured by non-acceptance. But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto.

[MQP. Dec. 2023]

[7 Marks]

Q10. Examine the validity of the acceptance by the term-

- "Acceptance by mere signature of the drawee without the addition of the word 'Accepted' on the negotiable instrument".
- "An Oral Acceptance".

Answer:

Requisites of a Valid Acceptance:

- Acceptance must be written
- Acceptance must be signed
- Acceptance must be on the bill
- Acceptance must be completed by delivery
- Where a bill is drawn in sets, the acceptance should be put on one part only
- Acceptance may be either general or qualified

The given problem is answered as follows:

- Although it is usual to accept the bill by writing the word 'accepted', yet it is not a necessary condition to make the acceptance valid. In other words, signature made by the drawee on the bill amounts valid acceptance even though such signature is not accompanied by the word 'Accepted'. Therefore, the acceptance in the given case is valid
- An oral acceptance is not valid since the acceptance must be in writing and signed.

[MQP. June. 2017]

[8 Marks]

Q11. "It would be safer for the drawer to cross a cheque not negotiable with the words 'account payee' added to it" Explain how it is safer for the drawer in such case.

Answer:

- As per the instructions issued by Reserve Bank of India on 9-9-1992, it would be safer for the drawer to cross a cheque 'not negotiable with the words 'account payee' added to it.

- As per Section 130 of Negotiable Instruments Act, 1881, the person taking an instrument bearing in either case the words "not negotiable" shall not have & shall not be capable of giving a better title to the transferee than the transferor.
- The addition of the words 'not negotiable' does not restrict the further transferability of the cheque; it only takes away the main feature of negotiability which is, that a holder with a defective title can give a good title to subsequent holder, in due course.
- Anyone who takes a cheque marked 'not negotiable' takes it at his own risk.
- The object of crossing a cheque 'not negotiable' is to award protection to the drawee or holder of the cheque against miscarriage or dishonesty in the course of transit by making it difficult to get the cheque so crossed cashed, until it reaches its destination.
- The words 'Account Payee' on a cheque are a direction to the collecting banker that the amount collected on the cheque is to be credited to the account of the payee.
- If he credits the proceeds to a different account, he is prima facie guilty of negligence and will be liable to the true owner for the amount of the cheque.
- But such a crossing does not affect the paying banker who is under no duty to ascertain that the cheque in fact has been collected for the account of the person named as the payee.
- Thus, the cheque crossed 'not negotiable' with the words 'account payee' added to it protects the drawer of the cheque in two ways:
 - The main feature of negotiability is lost i.e. the holder in due course cannot get a better title than that of the transferor.
 - The collecting banker must take utmost care to inquire into the title of its customer and satisfy itself that there is no defect in the title of the customer presenting such cheque of collection.

[PP. June. 2016, MTP Dec. 2017]

[8 Marks]

Q12. State the circumstances under which a banker is bound to refuse the payment of a cheque.

Answer:

- When the customer has countermanded payment: Where customer issues instructions to the banker not to make the payment of a particular cheque, the banker must not make the payment. A cheque, the payment of which is stopped by the customer is known as a 'stopped cheque'. And a stopped cheque is a piece of waste paper in the hands of payee. It is, however, necessary that a countermand to be effective must reach the banker before he had paid the cheque in the ordinary course. It may also be noted that the countermand notice must be duly signed by the customer and give correct particulars of the cheque.
- Death of customer: Sometimes, the banker receives notice of customer's death. In such cases, he must refuse the payment of the cheque presented after the notice of death. However, if the payment is made before the banker receives the notice of death, the payment is valid and banker is justified in making such payment.
- Insolvency of customer: When the banker receives a notice of customer's insolvency. In such cases also he must refuse the payment of the cheques presented after the notice

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



- **Unsoundness of customer:** When the banker receives the notice that his customer has become insane. In such cases also, he must refuse payment of the cheque presented after the notice.
- **Garnishee order:** A court order attaching the balance in customer's account is called a garnishee order. When the banker receives such order then he is bound to refuse the payment of the customer's cheque.
- **Lost cheque:** Sometimes, the drawer informs the banker that a particular cheque is lost. In such cases, banker must refuse the payment of that cheque.
- **Account closure:** Sometimes the customer closes his account and gives notice to the banker. In such cases the banker must not pay any cheque of the customer after the closure of the account.
- **When holder's title is defective:** Sometimes, the banker comes to know of any defect in the title of the person presenting the cheque. In such cases, he must refuse the payment of the cheque.
- **Assignment of customer's balance:** When a customer gives notice of assignment of credit balance in his account, the banker must refuse the payment of cheque.

[RTP Dec. 2018]

Q13. State the circumstances on the basis of which a banker can dishonor a cheque under the provisions of Negotiable Instruments Act, 1881.

Answer:

Grounds for dishonour of cheque

A banker will be justified or bound to dishonour a cheque in the following cases:

- a) If a cheque is undated
- b) If the cheque is stale
- c) If the instrument is inchoate or not free from reasonable doubt.
- d) If the cheque is post-dated and presented for payment before its ostensible date.
- e) If the customer's funds in the banker's hands are not properly applicable to the payment of cheque drawn by the former.
- f) If the customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which either he has account or his account is overdrawn.
- g) If the bankers receive notice of customer's insolvency or lunacy.
- h) If the customer countermands the payment of cheque for the banker's duty and authority to pay a cheque ceases.
- i) If a garnishee or other legal order from the Court attaching or otherwise dealing with the money in the hand of the banker, is served on the banker.
- j) If the authority of the banker to honour a cheque of his customer is undermined by the notice of the latter's death.
- k) If notice in respect of closure of the account is served by either party on the other
- l) If it contains material alterations, irregular signature or irregular endorsement

[MTP Dec. 2020]

[7 Marks]

Q14. Who are the parties to the instruments?

Answer:

- The transaction of the instrument requires at least two persons. One is the drawer and other is the drawee. The drawer of the instrument is the person who makes a bill of exchange or a cheque and the person thereby directed to pay is called the drawee. In 'Shivanth V. Bsihambar' - AIR 1935 Lah. 153 it was held that the definition of drawer is not exhaustive; the maker of the promissory note can also be called a drawer.
- 1. **Drawer in case of need** - When in the bill or in any endorsement thereof the name of any person is given in addition to the drawee to be resorted to in case of need, such a person is called a 'drawee in case of need'.
- 2. **Acceptor** - After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the acceptor.
- 3. **Acceptor for honor** - When a bill of exchange has been noted or protested for non acceptance or for better security and any person accepts it supra protest for honor of the drawer or any one of the endorsers, such person is called an 'acceptor for honor'.
- 4. **Payee** - The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the 'payee'.
- 5. **Holder** - Section 8 defines the term 'holder'. The holder of a promissory note or a bill of exchange or cheque is any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.
- 6. **Holder in due course** - Section 9 defines the term 'holder in due course'. It means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or the endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

[MTP Dec. 2020 & June 2023]

[7 Marks]

Q15. Discuss the provisions relating to the negotiable instrument in international law.

Or

Discuss the special characteristics of "Negotiable Instruments".

Answer:

QUESTION BANK

CA AKASH AGARWAL

NEGO, 1801

- The law relating to negotiable instruments is contained in the negotiable Instruments Act, 1981. It is an act to define and amend the law relating to promissory note, bills of exchange and cheques. This Act is applicable to the whole of India. Generally, an instrument, under legal parlance, denotes a piece of paper by which rights or liabilities of a person is created, satisfied, diminished, enhanced in relation to any other person.
- Section 13 of the Act defines the terms 'negotiable instrument' as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque-
 - is payable to order which is expressed to be so payable or which is expressed to be payable to particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;
 - is payable to the bearer which is expressed to be so payable or on which the only or last endorsements an endorsement in blank;
 - either originally or by endorsement, is expressed to be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

Essential Features of a Negotiable Instrument/ special characteristics:

1. It must be in writing.
2. It should be signed by the maker or drawer.
3. There must be a promise or order to pay.
4. The promise or order must be unconditional.
5. It must call for payment in money and money only.
6. It should call for payment of a certain sum.
7. The property in the instrument may be passed in two ways:
 - a. by mere delivery; and
 - b. by indorsement and delivery.
8. The consideration is also presumed to have been passed.

[MQP Dec. 2024]

[7 Marks]

Q16. Discuss the circumstances when a Bill of Exchange is dishonored and the roll of a notice in this regard.

Answer:

The dishonor may be due to the following reasons-

- a) non acceptance; and
- b) by non-payment
- a) Section 91 provides that a bill of exchange is said to be dishonored by non-acceptance when the drawee, or one of several drawees, not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not

accepted. When the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonored.

- b) Section 92 provides that an instrument is said to be dishonored by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Roll of a notice:

- Section 93 provides that when an instrument is dishonored the holder must give notice that the instrument has been dishonored.
- Section 94 provides that the notice may be in writing or oral. If it is in written form it must be sent by post and may be in any form but it must inform the party to whom it is given either in express term or by reasonable intendment that the instrument has been dishonored and he will be held liable thereon. It must be given within a reasonable time after dishonor at the place of business or at the residence of the party for whom it is intended
- Section 95 provides that any party receiving notice of dishonor must, in order to render any prior party liable to himself, give notice of dishonor to such party within a reasonable time, unless such party otherwise receives due notice.
- Section 96 provides that when the instrument is deposited with an agent for presentment, the agent is to issue notice to his principal who is entitled to a further like period to give notice of dishonor.
- Section 97 provides that when the party, to whom a notice of dishonor is dispatched, is dead, but the party is not aware of the death, the notice is sufficient.
- Section 98 provides that in the following circumstances there is no requirement to issue notice
 - When it is dispensed with by the party entitled thereto;
 - In order to charge the drawer, when he has countermanded payment;
 - When the party charged could not suffer damage for want of notice;
 - When the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
 - To charge the drawers, when the acceptor is also a drawer;
 - In the case of a promissory note which is not negotiable;
 - When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



[MQP Dec. 2024]

[7 Marks]

Q17. Examine the validity of the condition "Issuing a cheque that bounces is an Offence"

Answer:

➤ Section 138 provides penalty for dishonour of cheque for insufficiency etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any money to another person from out of that account for the discharge, in whole or in part, of any 'debt or other liability' (a legally enforceable debt or other liability) is returned by the bank unpaid, -

- either because of the amount of money standing to the credit of that account is insufficient to honor the cheque; or
- that it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with

- imprisonment for a term which may be extended to 2 years or
- with fine which may extend to twice the amount of the cheque, or with both.

➤ The penal provision in this cheque shall not apply unless-

- The penal provision in this cheque shall not apply unless-the cheque has been presented to the bank within a period of three months (with effect from 01.04.2012, before that it is six months) from the date on which it is drawn or within the period of its validity, whichever is earlier;
- the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheques as unpaid; and
- the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.

➤ In 'Kusum Ingots & Alloys Limited V. Pennar Peterson Securities Limited' – AIR 2000 SC 954, the Supreme Court held that the ingredients which are to be satisfied for making out a case under Section 138 of the Act, are-

- a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for discharge of any debt or other liability;

- that cheque has been presented to the bank within a period of six months (now three months) from the date on which it is drawn or within the period its validity whichever is earlier;
- that the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
- the payee or holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days (now 30 days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
- the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.
- Section 139 provides that it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability.
- In 'B. Mohan Krishna V. Union of India' – 1996 CrLJ 683 (AP DB), the Andhra Pradesh High Court Division Bench held that the presumption in Section 139 in favor of the holder of a cheque is not violative of Article 20(3) of the Constitution which incorporates immunity against self-incrimination.
- Section 140 provides that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in the section.

[MQP Dec. 2018]

[6 Marks]

Q18. When is presentment of an instrument not necessary under the Negotiable Instruments Act?
Answer:

According to Section 76 of the Negotiable Instruments Act 1881, no presentment to payment is necessary in any one of the following cases:

- a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
- b) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
- c) if the instrument being payable at some other specified place, neither he nor any other person authorised to pay it attends at such place during the usual business hours, or
- d) if the instrument not being payable at any specified place, if he (i.e. maker etc) cannot after due search be found;
- e) as against any party sought to be charged therewith, if he (i.e maker, etc.) has engaged to pay notwithstanding non-presentment;
- f) as against any party if after maturity, with knowledge that the instrument has not been presented – he makes a part payment on account of the amount due on the instrument, or

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment; as against the drawer, if the drawer could not suffer damage from want the of such presentment.

[PP June 2024]

[7 Marks]

Q19. Explain Assignment of Negotiation instruments. How would you differentiate between negotiation and assignment?

Answer: Assignment of Negotiation Instruments

- Assignment takes place where the holder of an instrument transfers it to another so as to confer a right on the transferee to receive the payment of the instrument. All negotiable instruments are choosing in action and as such are transferable by assignment without endorsement under sections 130-132 of the Transfer of property act. Assignment of a negotiable instrument is effected by writing without endorsement.
- The main feature of assignment is that the assignee obtains the right of the assignor. Therefore, if the assignor's title is defective assignee title will also be defective.

Difference between Negotiation and Assignment are as under:

Negotiation	Assignment
Consideration is <u>presumed</u> until contrary is proved.	Consideration <u>must be proved</u>
If transferee is a <u>holder in due course</u> , he takes the instrument free from any defects.	Assignee's title is always <u>subject to defences and equities between the original debtor and assignor</u>
<u>Notice of transfer is not necessary</u> Negotiation is effected by <u>delivery</u> in case of instruments payable to bearer and by <u>delivery and endorsement</u> in case of instrument payable to order.	<u>Notice of assignment must be given</u> Assignment is <u>effected only by writing</u>
Transferee can <u>sue the third party</u> in his own name.	Assignee <u>cannot sue the third party</u> in his own name.
There are a number of <u>presumptions</u> in favour of holder in due courses	There are <u>no such presumptions</u> .

EXTRA QUESTIONS

Q20. Which are the essential elements of a valid acceptance of a Bill of Exchange? An acceptor accepts a "Bill of Exchange" but write on it "Accepted but payment will be made when goods delivered to me is sold. Decide the validity.

Answer:

Essentials of a valid acceptance

- Written (whether on the face or back of the bill).
- Signed (Signature without the word 'accepted' is also valid).
- Signing on the bill.
- Delivering or intimation to the holder that the bill has been accepted.

Section 86-Qualified Acceptance

If the holder of a bill of exchange acquiesces (accept something reluctantly but without protest) in :

- (1) a qualified acceptance (conditional acceptance), or
- (2) an acceptance limited to part of the sum mentioned in the bill, or
- (3) an acceptance which substitutes a different place or time for payment, or
- (4) an acceptance which (where the drawees are not partners) is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Hence, The given case is that of a Qualified Acceptance. where a holder of the bill consents to qualified acceptance, all the prior parties who did not consent to qualified acceptance are discharged.

Q21. Explain the terms 'Acceptor for Honour' and Drawee in case of need' as used in the Negotiable Instruments Act, 1881.

Answer:

Section 7-"Acceptor for honour"

When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it after protest for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

Section 7-"Drawee in case of need"

When in the Bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need."

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



Q22. State whether the following alteration is material alteration under the provisions of the Negotiable Instruments Act, 1881.

A promissory note was made without mentioning any time for payment. The holder has added the words "on demand" on the face of the instrument

Answer:

Section 19-Demand Instrument

A Promissory Note or Bill of Exchange on which time is not specified is payable on demand.

Section 87- Material Alteration

Any material alteration of a negotiable instrument renders the same VOID as AGAINST

(1) anyone who is a party thereto at the time of making such alteration AND

(2) does not consent thereto,

unless it was made in order to carry out the common intention of the original parties

Section 89-Payment of instrument on which alteration is not apparent

Where a promissory note, bill of exchange or cheque has been materially altered but DOES NOT APPEAR to have been so altered, then the person liable to pay, who actually pays the same according to the APPAREN TENOR in DUE COURSE, shall be discharged.

In the said case, a promissory note was made without mentioning any time for payment. The holder added the words on demand on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is NOT a material alteration because where no date of payment is specified on a promissory Note, it will be treated as payable on demand.

Q23. Examine the following cases with respect to their validity. State your answer with reasons

(i) A bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-01-2021, if presented on 01-01-2021.

(ii) A holder gives notice of dishonor of a bill to all the parties except the acceptor. The drawer claims that he is discharged from his liability as the holder fails to give notice of dishonour of the bill to all the parties thereto.

Answer:

Section 22-Maturity

Days of grace Every promissory note or bill of exchange which is NOT expressed to be payable on demand, at sight or on presentment is at maturity on the THIRD day after the day on which it is expressed to be payable.

So, if an instrument is payable on demand, days of grace is not added.

(i) The bill of exchange is drawn, mentioning expressly as 'payable on demand'

If the bill is presented on 01-01-2021, it will be payable on 01-01-2021.

Therefore the statement "A bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-01-2021, if presented on 01-01-2021" is NOT valid as no days of grace are allowed in the case of bill payable on demand

Section 93- By and to whom notice should be given

The holder, or some prior party, must give notice that "the instrument has been dishonoured" to all other parties whom the holder seeks to make liable.

However, there is no need to give Notice of Dishonour to:

1. MAKER of the dishonoured promissory note or
2. DRAWEE or ACCEPTOR of the dishonoured bill of exchange or cheque

Accordingly, notice of dishonour to the acceptor of a bill is not necessary. Therefore, claim of drawer that he is discharged from his liability on account of holder's failure to give notice to all the parties thereto, is invalid.

Q24. State briefly the rules laid down under the Negotiable Instruments Act for determining the date of maturity of a bill of exchange. Ascertain the date of maturity of a bill payable 100 days after sight and which is presented for sight on 4th May, 2022.

Answer:

Section 23 to 25: Calculating maturity

- (1) Section 23: Where a negotiable instrument is payable on a stated number of MONTHS after date or after sight or after happening of certain event then it shall become payable on
- (a) the corresponding day of the relevant month (date on which negotiable instrument is drawn) or
 - (b) the corresponding day of the relevant month (date on which the negotiable instrument is presented for sight) or
 - (c) the corresponding day of the relevant month (date on which the event happens) plus stated number of months plus 3 days of grace.

If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month

- (2) Section 24: Where a negotiable instrument is payable on a stated number of DAYS after date or after sight or after happening of certain event then it shall become payable on
- (a) the date on which negotiable instrument is drawn or
 - (b) the date on which the negotiable instrument is presented for sight or
 - (c) date on which the event happens plus stated number of days plus 3 days of grace

(3) Section 25: When the last day of grace falls on a day which is PUBLIC HOLIDAY, the instrument is due and payable on the PRECEDING business day. If the day of maturity is an

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



EMERGENCY or unforeseen holiday then the maturity date will be shifted to the SUCCEEDING business day.

Explanation-The expression "public holiday" includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday

Calculation of Maturity Date:

Exclude the day of presentment for sight = 4th May, 2022.

Then start counting 100 days.

May	31 days month -4 days	27
June	30 days month	30
July	31 days month	31
August	0-12 days	12
Add: 3 Days of Grace	13 th , 14 th , 15 th	3
		15-August-2022 (Public Holiday)
Maturity Date = Preceding business day=		14-August-2022

Q25. Explain the concept and different forms of

(i) Restrictive endorsement and

(i) Qualified endorsement

Answer:

(i): Section 50- Restrictive indorsement

The indorsement may, by express words, RESTRICT or EXCLUDE such right of further Endorsement, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Examples of Restrictive Indorsement (Bare Act)

(a) "Pay the contents to C only".

(b) "Pay C for my use."

(C)"Pay C for the account of B."

(d) "the within must be credited to C."

Section 52-Qualified Indorsement

Conditional (Qualified) Indorsement: The indorser of a negotiable instrument may, by express words in the indorsement, make his own liability or the right of the indorsee to receive the amount

due thereon depend upon the happening of a specified event, although such event may never happen.

Example: Pay to A on safe receipt of goods.

Q26. explain the consequences if a cheque gets dishonoured for insufficiency of funds in the account.

Answer:

Where any cheque drawn by a person on an ACCOUNT maintained by him with a banker for payment of any amount of money to another person from out of that ACCOUNT for the discharge, is dishonoured, such person shall be deemed to have committed an offence

Punishment u/s 138:-

Imprisonment or,	≤ 2 years or
Fine or,	≤ 2 X Amount of Cheque or,
Both	≤ [2 years+2XAmount of Cheque]

Conditions to be fulfilled:

(1) If the cheque is returned by the bank unpaid due to INSUFFICIENCY of FUNDS in the account of drawer except in case of "Stop Payment".

(2) If the cheque was drawn to discharge a LEGALLY ENFORCEABLE debt or other liability.

(3) If the cheque has been presented to the bank within a period of 3 MONTHS from the date on which it is drawn.(i.e. it is not a stale cheque)

(4) If the payee or the holder in due course of the cheque has given a WRITTEN NOTICE demanding payment within 30 days from the drawer on receipt of information of dishonour of cheque from the bank.

5) If the drawer has FAILED to make payment within 15 days of the receipt of the said notice.

6) If the payee or a holder in due course has made a COMPLAINT within 30 days of cause of action arising u/s 138 (Section142)

Q27. What is the meaning of Not negotiable crossing as per the Negotiable Instruments Act, 1881?

Answer:

Not negotiable Crossing

This requires writing of words "not negotiable" in addition to the two parallel lines. These words may be written inside or outside these lines.

According to Section 130, a person taking a cheque crossed generally or specially, bearing in either case The Word "not negotiable" shall not have, and shall not be capable of giving a better title to the

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



cheque than that which the person from whom he took it. It is a statutory crossing. A cheque with such crossing is not negotiable, but continues to be transferable as before.

Ordinarily, in a negotiable instrument, if the title of the transferor is defective, the transferee, if he is a Holder in Due Course, will have a good title. When the words "not negotiable" are written, even a Holder in Due Course will get the same title as that of transferor. Thus, if the title of the transferor is defective, the title of transferee will also be so.

Hence, the addition of the words not negotiable does not restrict the further transferability of the cheque, but it entirely takes away the main feature of negotiability, which is that a holder with a defective title can give a good title to the subsequent holder in due course.

Q28. As per Negotiable Instruments Act, 1881, what are the parties who may cross a cheque?

Answer:

A cheque may be crossed by the following parties:

- (i) By Drawer: A drawer may cross it generally or specially.
- (ii) By Holder: A holder may cross an uncrossed cheque generally or specially. If the cheque is crossed generally, the holder may cross specially. If cheque crossed generally or specially, he may add words "not negotiable".
- (iii) By Banker: A banker may cross an uncrossed cheque, or if a cheque is crossed generally he may cross it specially to another banker, his agent, for collection.

Q29. Explain the meaning of 'Negotiation by delivery with the help of an example. Give your answer as per the provisions of the Negotiable Instruments Act, 1881

Answer:

Negotiation by delivery

According to section 47 of the Negotiable Instruments Act, 1881, subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

Q30. Explain the modes of discharge from liability on instruments, as per the provisions of the Negotiable Instruments Act, 1881.

Answer:

According to section 82 of the Negotiable Instruments Act, 1881, the maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon

- (a) By cancellation-to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and to all parties claiming under such holder,
- (b) By release-to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge;
- (c) By payment-to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

Further, as per section 83 of the Negotiable instruments Act, 1881, if the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Q31. Explain the power of court for trial of to cases summarily, as per the provisions of the Negotiable Instruments Act, 1881

Answer:

According to section 143 of the Negotiable Instruments Act, 1881,

1. **Trial of Offence:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials: In case of summary trial: Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

2. **In case where no summary trial can be made:** Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

3. **Speedy Trial:** The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1981



adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

4.Speedy and efficient Disposal: Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

Q32. Discuss the provisions relating to the negotiable instrument international law. OR Discuss the special characteristics of "Negotiable Instruments".

Answer:

The law relating to negotiable instruments contained in the negotiable Instruments SI 1981. It is an act to define and amend the law relating R 01 promissory note, bills of exchange and cheques. This Act is applicable to the whole of India. Generally, an instrument, under legal parlance, denotes a piece of paper by which rights or liabilities of a person is created, satisfied, diminished, enhanced in relation to any other person. Section 13 of the act defines the terms negotiable instrument' as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque-

-is payable to order which is expressed to be payable or which is expressed to be payable to particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;

-is payable to the bearer which is expressed to be payable or on which the only or last endorsements an endorsement in blank;

-either originally or by endorsement, is expressed to payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

Essential features of a Negotiable Instrument:

- It must be in writing.
- It should be signed by the maker or drawer.
- There must be a promise or order to pay.
- The promise or order must be unconditional.
- It must call for payment in money and money only.
- It should call for payment of a certain sum.
- The property in the instrument may passed in two ways:
 - by mere delivery; and
 - by indorsement and delivery.

Q33. Discuss briefly the historical background of law of Negotiable Instruments India.

Answer:

- The objective of having negotiable instruments was to simplify the transaction in money, such that during the transfer of higher amounts of money, people do not fall prey to thefts or robbery committed on route.
- Such negotiable instruments came to be legalized and regulated through the Negotiable Instruments Act, 1881. Negotiable instruments are those documents that evidence a contractual right to claim payment and which can be transferred upon delivery. Therefore, the age-old rule that states no one can transfer a better title than the person who has the same, does not hold good in such situations. The system of negotiable instruments gets regulated the Ministry of Finance that supervises the transfers and negotiability of such instruments.
- Negotiable instruments are those documents which are used to transfer money between designated persons.
- These instruments either contains a promise or an instruction to pay to the other, an assigned sum of money at a particular time.

Q34. What is the object, scope and applicability of Negotiable Instruments Act? Is it exhaustive on matters relating 01 Negotiable Instruments?

Answer:

- The law relating to negotiable instruments is the law of the commercial world which was enacted 01 facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another.
- In the absence of such instruments, trade and commerce activities were likely to be adversely affected as it was not practicable for the trading community to carry on with it bulk of the currency in force.
- The main objective of the Act is to legalize system in which instruments contemplated by it could pass from hand to hand by negotiation like any other goods.

Q35. Define and explain Promissory Note' What are its essential features?

Answer:

- Section 4 of the Act defines the term promissory note' as an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.
- In a promissory note, there are only two parties. One is the other is the payer, payee. Such instruments can also be negotiated when endorsed and delivered or be delivered only.
- Essential Features of Promissory Note:
 - It must be in writing

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



- There must be an express promise to pay.
- promise 01 pay is dependent upon an event which is certain to happen, although the time of its happening is uncertain, promise to pay is unconditional.
- A promissory note must be signed by the maker. Promise to pay a certain sum.
- Promise to pay money only
- Payee must be certain
- A promissory note must be stamped.

CASE STUDIES

Q36. Uma executes a promissory note in the following form, 'I promise to pay a Sum of months. The instrument does not specify any payee, not even the bearer. Decide whether the promissory note is a valid promissory note.

Answer:

A Promissory note is an instrument in writing (not being a bank note or a currency-note)

- (a) containing an UNCONDITIONAL UNDERTAKING (Promise), signed by the MAKER
- (b) to pay a CERTAIN sum of MONEY only
- (c) To, or to the ORDER of, a certain person, or to the BEARER of the instrument.

In the above question the amount is certain, but the name of the payee is missing. So, the above instrument is not a valid promissory note.

Q37. Are the following instruments Signed by Mr. Yadav is valid promissory Notes? Give the reasons.

- (a) I promise to pay D's son 10000 for value received (D has two sons)
- (b) I promise to pay 5000/- on demand at my convenience.

Answer:

A Promissory note" is an instrument in writing (not being a bank-note or a currency-note) (a) containing an UNCONDITIONAL UNDERTAKING (Promise), signed by the MAKER,

- (b) to pay a CERTAIN sum of MONEY only
- (C) TO, or to the ORDER of, a certain person, or to the BEARER of the instrument.

Hence,

- (a) This is not a valid promissory note as D has 2 sons and it is not specified in the promissory note that which son of D is the payee.
- (b) This is not a valid promissory note as details of the payee are not mentioned in it, and it is not an unconditional undertaking.

Q38. Discuss with reasons, whether the following persons can be called as a 'holder under the Negotiable Instruments Act, 1881:

- (i) X who obtains a cheque drawn by Y by way of gift.

(ii) A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.

(iii) M, who finds a cheque payable to bearer, on the road and retains it.

(iv) B, the agent of C, is entrusted with an instrument without indorsement by C, who is the payee.

(v) B, who steals a blank cheque of A and forges A's signature.

Answer:

The holder of a negotiable instrument means any person

1. Rightful Possession: entitled in his own name to the possession thereof and
2. Right to Receive: to RECEIVE or recover the amount due thereon from the parties thereto

On applying the above provision in the given cases-

(i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.

(ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein

(iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.

(iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

(v) No, B is not a holder because he is in wrongful possession of the instrument

Q39. A draws and B accepts the bill payable to C or order, C endorses the bill to D and D to E, who is a holder in due course. From whom E can recover the amount? Examining the right of E, state the privileges of the holder-in-due course provided under the Negotiable Instruments Act, 1881.

Answer:

The holder in due course is a particular kind of holder. The holder of a negotiable instrument is called holder in due course if he satisfies the following conditions:

1. Valuable Consideration: He obtained the instrument for a VALUABLE CONSIDERATION.
2. Before Maturity: He obtained the possession of the negotiable instrument BEFORE its MATURITY, i.e., before the amount mentioned on it became payable.
3. Good Faith: He had no cause to believe that any defect existed in the title of the person from whom he derived his title. In other words, he must have obtained it in GOOD FAITH.

Privileges of a holder in due course (Section 36, 53, 43, 58, 46, 20, 120, 121)

The Privileges of a holder in due course are enshrined in various Sections as under:

- (1) Sue Power: Every prior party to a negotiable instrument is liable to holder in due course (Sec. 36).

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



- (2) **Cleansing effect:** A holder who derives title from Holder in due course has the same right as that of a Holder in due course, provided he is himself not a party to the fraud (Sec. 53)
- (3) **Accommodation Instrument:** No prior party can set up a defense that the negotiable instrument was drawn, made or endorsed by him without any consideration (Sec. 43).
- (4) **Fraudulent endorsement:** No prior party can set up a defense that the negotiable instrument was lost or was obtained from him by an offence or fraud or for an unlawful consideration. (Sec 58).
- (5) **Conditional delivery:** No prior party can allege that the negotiable instrument was delivered conditionally or for a special purpose only (Sec. 46).
- (6) **Inchoate Stamped Instrument:** Holder in due course can claim full amount of the negotiable instrument (but not exceeding the amount covered by the stamp) even though such amount is in excess of the amount authorized by the person delivering an inchoate negotiable instrument (Sec. 20).
- (7) **Estoppel against denying original validity of instrument:** No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a HOLDER IN DUE COURSE, be permitted to deny the VALIDITY of the instrument as originally made or drawn. (Sec 120).
- (8) **Estoppel against denying payee's capacity to indorse:** No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a HOLDER IN DUE COURSE, be permitted to deny the PAYEE'S CAPACITY, at the date of the note or bill, to indorse the same. (Sec 121).

As per Sec 36, every prior party to a negotiable instrument is liable to holder in due course. Accordingly, in the given problem, E, a holder in due course can recover the amount from all the prior parties i.e., D & C (the endorser), B (an acceptor) and A (the drawer).

Q40. On a Bill of Exchange for 1 lakh, Y's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'Z' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from Y'.

OR

Mr. Y is the payee of an order cheque. Mr. Y steals the cheque and forges Mr. Y signature and endorses the cheque in his own favour. Mr. Y then further endorses the cheque to Mr. U who takes the cheque in good faith and for valuable consideration. Examine the validity of the cheque to Mr. U as per the provisions of the Negotiable Instruments Act, 1881. And also state whether Mr. U can claim the privileges of Holder-in-Due course

Answer:

Section 9- Holder in due course and Forgery

The holder in due course is a particular kind of holder. The holder of a negotiable instrument is called holder in due course if he satisfies the following conditions:

1. **Valuable Consideration:** He obtained the instrument for a VALUABLE CONSIDERATION.
2. **Before Maturity:** He obtained the possession of the negotiable instrument BEFORE its MATURITY, i.e., before the amount mentioned on it became payable.
3. **Good Faith:** He had no cause to believe that any defect existed in the title of the person from whom he derived his title. In other words, he must have obtained it in GOOD FAITH.

Forgery: When the Signature on the Negotiable Instrument is forged But where a signature on the negotiable instrument is forged, it becomes a nullity. This principle is universal in character, by reason whereof, even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. (Mercantile Bank vs D'Silva).

So, even the HIDC will not get a valid title on the Instrument in case of forgery.

Q41. Mr. W draws a cheque of R 11,000 and gives to Mr. L by way of gift. State with reason whether

(1) Mr. Bis a holder in due course as per the Negotiable Instrument Act, 1881.

(2) Mr. B is entitled to receive the amount of 11,000 from the bank?

OR

Ram draws a cheque of 1 lakh. It was a bearer cheque. Raj kept the cheque with himself. After some time, Raj gives this cheque to Shubham as a gift on his birthday. Decide whether Shubham is having a valid title over the cheque and whether Shubham is a holder in due course or not in relation to this cheque as per the Section 9 of the Negotiable Instruments Act 1881.

Answer:

Section 9-Holder in due course (HIDC)

The holder in due course is a particular kind of holder. The holder of a negotiable instrument is called holder in due course if he satisfies the following conditions:

1. **Valuable Consideration:** He obtained the instrument for a VALUABLE CONSIDERATION.
2. **Before Maturity:** He obtained the possession or the negotiable instrument BEFORE its MATURITY, i.e. before the amount mentioned on it became payable.
3. **Good Faith:** He had no cause to believe that any defect existed in the title of the person from whom he derived his title. In other words, he must have obtained it in GOOD FAITH.

In the instant case, Mr. w draws a cheque ori,000 and gives to Mr. B by way of gift.

- (i) Mr. L is holder but not a HIDC Since he did not get the cheque for valuable consideration.
- (ii) Mr. L's title is good and bonafide. As a holder he is entitled to receive 11,000 from the bank

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



Q42. State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument as per The Negotiable Instruments Act, 1881

- (i) Pavan draws a Bill of Exchange in Delhi upon SUDHIR resident of Jaipur and accepted to be payable in Thailand after 90 days of acceptance.
- (ii) Pavan draws a bill of Exchange in Mumbai upon Suresh a resident of Australia and accepted to be payable in Chennai after 30 days of sight.
- (iii) Vijay draws a Bill of Exchange in California upon Ajay a resident of Jodhpur and accepted to be payable in Kanpur after 6 months of acceptance.
- (iv) Sukesh draws a Bill of Exchange in Lucknow upon Nilesh a resident of China and accepted to be payable in China after 45 days of acceptance

Answer:

Section 11: Inland Instrument

An inland instrument is a promissory note, bill of exchange or cheque if;

- (i) It is drawn in India on a person residing in India, whether payable in or outside India, or
- (ii) It is drawn in India on a person residing outside India payable in India.

Section 12: Foreign Instrument

An instrument which is not an inland instrument is a foreign instrument. Thus, following are foreign bills-

- (i) A bill drawn in India on a person residing outside India and made payable outside India.
- (ii) A bill drawn outside India whether or not payable in India

Conclusion

Following are the answers as to the nature of the Instruments:

- (i) In first case, Bill is drawn in Delhi by Ram on a person (Sudhir), a resident of Jaipur (though accepted to be payable in Thailand after 90 days) is an Inland instrument.
- (ii) In second case, Ramesh draws a bill in Mumbai on Suresh resident of Australia and accepted to be payable in Chennai after 30 days of sight, is an Inland instrument.
- (iii) In third case, Vijay draws a bill in California (which is situated outside India) and accepted to be payable in India (Kanpur), drawn upon Ajay, a person resident in India (Jodhpur), therefore the Instrument is a Foreign instrument.
- (iv) In fourth case, the said instrument is a Foreign instrument as the bill is drawn in India by Sukesh upon Nilesh, the person resident outside India (China) and also payable outside India (China) after 45 days of acceptance.

Q43. Vinod executed a promissory note in favour of Dhaval for 10 crore. The said amount was payable 4 days after sight. Dhaval, on maturity, presented the promissory note on 16th February 2019 to Vinod. Vinod made the payment on 21st February 2019. Dhaval wants to recover the interest for two days from Vinod. Advise Vinod, in the light of the provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay interest for two days.

Answer:

Section 24-Calculating maturity of bill or note payable so many days after date or sight

Where a negotiable instrument is payable on a stated number of DAYS after date or after sight or after happening of certain event then it shall become payable on the date on which negotiable instrument is drawn or the date on which the negotiable instrument is presented for sight or the date on which the event happens plus stated number of days plus 3 days of grace

Conclusion

As per the stated facts, Dhaval presented the Promissory Note on 16th February 2019 and Vinod made payment on 21st February 2019. As per the terms of the execution of Promissory note it was payable 4 days after sight. According, to the above provision, since the bill was presented on 16th February 2019, so Mehul was required to pay by 20th February 2019 and not on 21st February 2019. Therefore, Mehul has delayed the payment by 1 day and is liable to pay interest for 1 day only. Therefore, Nirav's claim to recover the interest for 2 days is invalid.

Q44. Mr. S Yash drew a cheque in favour of M who was 16 years old. M settled his rental due by endorsing the cheque in favour of Mrs. T the owner of the house in which he stayed. The cheque was dishonoured when Mrs. T presented it for payment on grounds in inadequacy of funds. Advise Mrs. T how she can proceed to collect her dues.

Answer:

Section 26-Capacity to make, etc., promissory notes, etc.

Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself

Conclusion

Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. Mrs. T can, thus, proceed against Mr. P Yash to collect her dues.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



Q45. E is the holder of a bill of exchange made payable to the order of 'F'. The bill of exchange contains the following endorsements in blank:

First endorsement 'F'

Second endorsement 'G'.

Third endorsement 'H' and

Fourth endorsement 'I'

'E' strikes out, without I's consent, the endorsements by 'G' and 'H'. Decide with reasons whether 'E' is entitled to recover anything from "under the provisions of Negotiable Instruments Act, 1881.

Answer:

Section 40-Discharge of indorser's liability

Where the Holder of a negotiable instrument, without the consent of the indorser, DESTROYS or impairs the INDORSER'S REMEDY against a prior party, the indorser is DISCHARGED from liability to the holder to the same extent as if the instrument had been paid at maturity

Section 39-Suretyship

When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

In simple words, it means that in the Negotiation chain, the Endorser is a SURETY (Guarantor). Endorser's liability is secondary to that of preceding party. Party preceding the endorser has the primary liability. So, if preceding party is discharged then the Endorser is also discharged.

Hence,

"E, the holder, strikes out the endorsement by 'G' and 'H'; in that case the liability of 'G' and 'H' upon the bill will come to an end. But if the endorsements of 'G' and 'H' are struck out without the consent of I then E will not be entitled to recover anything from I. The reason being that as between 'H' and 'I', 'H' is the principal debtor and 'I' is surety. If 'H' is released by the holder under Section 39 of the Act, 'I', being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if 'E' strikes out, without 'I's consent, the endorsements by 'G' and 'H', then 'I' will also be discharged.

Q46. Samadh accepts a Bill of Exchange for 50,000 which is an accommodation bill drawn by A on 1st January 2020 to be payable at Mumbai on 1st July 2020. A transfers the bill to B on 1st February 2020 without any consideration. B further transfers it to C on 1st March 2020 for value. Then C transfers it again to D on 1st April 2020 without consideration. D holds the bill till maturity and on the due date of payment he presented the bill for payment but the bill is dishonoured by Samadh.

Discuss the rights of A, B, C and D to recover the amount of this bill as per the provisions of the Negotiable Instruments Act, 1881.

OR

'M' draws bill on N. N accepts the bill without any consideration. The bill is transferred too we consideration. 'O' transferred it to 'P' for 10,000. On dishonour of the bill, 'P' sued 'O' for recovery of the value of Rs. 10,000.

(i) Examine whether 'O' has any right to action against M and N?

(ii) Examine whether P has any right to action against M, N and O?

OR

A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide.

(i) Whether the prior parties other than D have any right of action inter se

(ii) Whether D can sue the prior parties of the bill?

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881

Answer:

Section 43-Negotiable instrument made, etc., without consideration

A negotiable instrument made, drawn, accepted, indorsed or transferred WITHOUT CONSIDERATION or for a consideration which fails, CREATES NO OBLIGATION of payment between the parties to the transaction.

Privilege of HFC [Holder for Consideration]

But if any such party has transferred the instrument with or without indorsement to a HOLDER FOR CONSIDERATION, such holder, and every SUBSEQUENT HOLDER deriving title from him, may RECOVER the amount due on such instrument from the transferor for consideration or any prior party thereto.

Conclusion to 1st Question

In view of the above provisions, A and B have no right to recover the bill amount. But, C, being a holder for consideration and the subsequent party D have right to recover the amount of the bill.

Conclusion to 1st & 2nd Question

(i) In the light of the above provisions, in the given instance the bill was drawn, accepted and transferred without consideration by "M" to "N", and from "N" to "O" respectively. Therefore, no

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



obligation of payment is created between 'M', 'N' and 'O'. So 'O' has no right to action against 'M' and 'N'.

(ii) However, the bill was transferred by 'O' to 'P' for a consideration of Rs. 10,000. So 'P' is a Holder for Consideration. Hence 'P' can RECOVER the amount due on such instrument from the transferor for consideration or any prior party thereto. So P can sue M, N and O for recovery.

Q47. P draws a bill on Q for 10,000. Q accepts the bill. On maturity the bill was dishonoured by non-payment. P files a suit against Q for payment of Rs. 10,000. a proved that the bill was accepted for value of Rs. 7,000 and as an accommodation to the plaintiff for the balance amount i.e. Rs. 3,000. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether P would succeed in recovering the whole amount of the Bill?

OR

Rahul purchases some goods on credit from Singh, payable within 3 months. After 2 months, Rahul makes out a blank cheque in favour of Singh, signs and delivers it to Singh with a request to fill up the amount due, as Rahul does not know the exact amount payable by him. Singh fills up fraudulently the amount larger than the amount payable by Ram and endorses the cheque to Chanda in full payment of Singh's own due. Ram's cheque is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of Singh and Chanda.

Answer:

Section 44-Partial absence or failure of money-consideration

When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation: Parties that stand in immediate relation with one another

Drawer of BE [Creditor]	Acceptor of BE [Debtor]
Maker of PN, Drawer of BE, Cheque [Debtor]	Payee [Creditor]
Indorser [Debtor]	Indorsee [Creditor]

Conclusion to 1st Question

On the basis of above provision, P would succeed to recover Rs. 7,000 only from Q and not the whole amount of the bill because it was accepted for value as to Rs. 7,000 only and an accommodation to P for 3,000.

Conclusion to 2nd Question

In the given question, Singh is a party in immediate relation with the drawer (Rahul) of the cheque and so he is entitled to recover only the exact amount due from Ram and not the amount entered in the cheque.

However, the right of Chandra, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from Singh.

Guruji Ka Gyan: The 2nd Question is about CHEQUE. SO, do not apply Section 20 on Inchoate Stamped Instrument. Always remember that Section 20 applies only to Promissory Note & Bill of exchange.

Q48. M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted.

Answer:

Section 46-Rules of Delivery

(1) Delivery may be Actual or Constructive: The making, acceptance or indorsement of a PN, BE, cheque is completed by DELIVERY, ACTUAL or CONSTRUCTIVE.

(2) Delivery refers to the whole of the instrument and not merely a part of it: Delivery of half instrument cannot be treated as constructive delivery of the whole

Conclusion

The question arising in this problem is whether the making of the note was making of promissory note is complete when one half of the note was delivered to N. Delivery of half instrument cannot be treated as constructive delivery of a whole.

So, the claim of N to have the other half of the P/N sent to him is not maintainable. M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

Q49. M drew a cheque amounting to 72 lakh payable to N and subsequently delivered to him. After receipt of cheque N indorsed the same to P but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement (negotiation) under the Negotiable Instruments Act, 1881?

Answer:

Section 48-Negotiation of ORDER Instrument by Indorsement & Delivery

A promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Conclusion

No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



Q50. What is a 'Sans Recourse Endorsement'? A bill of exchange is drawn payable to X or order. X indorses it to Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally indorsed the bill to Y by adding the words 'Sans Recourse'.

Answer:

Section 52-Sans Recourse Indorsement

Sans Recourse Indorsement (Sec 52): The indorser of a negotiable instrument may, by express words in their indorsement, exclude his own liability thereon

Section 90-Negotiation back

Negotiation Back (Sec 90): Where an indorser so excludes his liability by adding 'sans recourse' endorsement and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Conclusion

In the problem X, the endorser becomes the holder after it is negotiated to several parties. Normally, in such a case, none of the intermediate parties is liable to X. But in this case X's original endorsement is without recourse' and therefore, he is not liable to Y, Z, A and B. But the bill is negotiated back to X, all of them are liable to him and he can recover the amount from all or any of them.

Q51. S by inducing T obtains a Bill of Exchange from him fraudulently in his (S) favour. Later, he enters into a commercial deal and endorses the bill to U towards consideration to him (U) for the deal. U takes the bill as a Holder-in-due-course. U subsequently endorses the bill to S for value, as consideration to S for some other deal. On maturity the bill is dishonoured. S sues T for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, 1881 decide whether S will succeed in the case or not.

Answer:

Section 53-Cleansing effect of HIRC

A holder who derives title from Holder in due course has the same right as that of a Holder in due course, provided he is himself not a party to the fraud.

Thus, any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud.

Conclusion

Thus, applying the above provisions, it is quite clear that S who originally induced T in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as S himself was a party to the fraud.

Q52. C issues a cheque for Rs. 5,00,000/- in favour of D. C has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank became bankrupt, in the meantime. The drawer, C suffers actual damages. Decide under the provisions of Instruments Act, 1881, whether D can recover the money from C?

Answer:

Section 84- When cheque not duly presented and drawer damaged thereby

The Drawer is discharged from the liability to pay against a cheque drawn by him to the extent of Actual Damages suffered by him if the following Conditions are satisfied:

- (1) The drawer has sufficient balance when he issues the cheque, and when the cheque ought to be presented for payment.
- (2) The holder fails to present the cheque within reasonable time of issue of the cheque.
- (3) In the meantime, the bank fails.
- (4) Consequently the drawer suffers actual damages.

Conclusion

Therefore, C's Liability is reduced by the Amount of Actual Damages, but D can sue the Bank for the balance amount (Actual Damages).

Q53. Mr. Mukesh drew a cheque payable to Mr. Ranjit or Order. Mr. Ranjit lost the cheque and was not aware of the loss of the Cheque. The person who found the cheque forged the signature of Mr. Ranjit and endorsed it to Mr. Samrat. Mr. Samrat encashed the cheque, on the very same day from the drawee bank.

Mr. Ranjit intimated the drawee bank about the theft of the cheque after three days. Examine the liability of the drawee bank.

Answer:

Section 85-Protection to Paying Banker when Cheque is payable to order

- (A) A cheque payable to ORDER is discharged when the Drawee Bank makes PAYMENT IN DUE COURSE [Payment as per Apparent direction on the cheque]
- (B) A cheque expressed to be payable to BEARER is discharged when the Drawee Bank makes PAYMENT IN DUE COURSE, in spite of any endorsement in full or in blank appearing thereon, and in spite of that any Such endorsement restricts further negotiation

According to above stated section 85, the drawee banker is discharged when it has made a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



payee. Even though the signature of Mr. Ranjit is forged, the banker is protected and is discharged. The true owner, Mr. Ranjit cannot recover the money from the drawee bank in this situation.

Q54. Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following:

(a) A bill of Exchange originally drawn by M for a sum of 10,000 but accepted by R only for Rs. 7,000.

(b) A cheque marked 'Not Negotiable' is transferable.

Answer(a)

the holder of a bill of exchange acquiesces (accept something reluctantly but without protest) in :

- (1) a qualified acceptance (conditional acceptance), or
- (2) an acceptance limited to part of the sum mentioned in the bill, or
- (3) an acceptance which substitutes a different place or time for payment, or
- (4) an acceptance which (where the drawees are not partners) is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Conclusion

The given case is that of a Qualified Acceptance. Where a holder of the bill consents to qualified acceptance, all the prior parties who did not consent to qualified acceptance are discharged. If the Drawer (M) agrees to such acceptance, the drawee (R) is responsible for a sum of Rs 7000 only.

Answer(b)

Section 130-Not Negotiable Crossing

A cheque is said to contain a 'not negotiable crossing' when the words 'not negotiable' are added to the crossing. It may be done in the case of general crossing or special crossing. The cheque nevertheless remains negotiable

Mere writing words 'Not Negotiable' does not mean that the cheque is not transferrable

It is still transferable, but the transferee cannot get title better than what transferor had. This means that is the title of the endorser is defective then the title of the endorsee (even if he is HIDE) will also be defective.

A cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques. The holder of such a cheque cannot acquire title better than that of the transferor

Q55. Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following:

(a) A bill of Exchange originally drawn by M for a sum of 10,000 but accepted by R only for Rs. 7,000.

(b) A cheque marked 'Not Negotiable' is transferable.

Answer:

the holder of a bill of exchange acquiesces (accept something reluctantly but without protest) in :

- (1) a qualified acceptance (conditional acceptance), or
- (2) an acceptance limited to part of the sum mentioned in the bill, or
- (3) an acceptance which substitutes a different place or time for payment, or
- (4) an acceptance which (where the drawees are not partners) is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Conclusion

The given case is that of a Qualified Acceptance. Where a holder of the bill consents to qualified acceptance, all the prior parties who did not consent to qualified acceptance are discharged. If the Drawer (M) agrees to such acceptance, the drawee (R) is responsible for a sum of Rs 7000 only.

Q56. Sham has Rs. 2,000/- in his bank account and he has no authority to overdraw. He issued a cheque for Rs. 5,000/- to Gopal which was dishonoured by the bank. Point out whether Gopal must necessarily give notice of dishonor to Sham under the Negotiable Instruments Act, 1881?

Answer:

Section 98-When notice of dishonour is unnecessary

One of the grounds when the notice of dishonour is NOT necessary is "when the party charged could not suffer DAMAGE for lack of notice (insufficient funds)".

Sudhir vs. Sitaramn 2 Bom. L.R. 8911

In such a case, it is sufficient if it is shown that at the time of drawing the instrument, there were no funds belonging to the drawer in the hands of the drawee.

Conclusion

Thus, it is NOT necessary for Gopal to give notice of dishonor to Sham under section 98 or the Act. Although "notice of dishonor" is not necessary u/s 98, but A Demand Notice shall be sent to Sham as per Sec 138.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



Q57. J accepted a bill of exchange and gave it to K for the purpose of getting it discounted and handing over the proceeds to J. K having failed to discount it, returned the bill to J. J tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. K picked up the pieces and pasted the two pieces together, in such manner that the bill seemed to have been folded for safe custody, rather than cancelled. K put it into circulation and it ultimately reached L, who took it in good faith and for value. Is J liable to pay the bill under the provisions of the Negotiable Instruments Act, 1881?

Answer:

Section 120-Estoppel against denying original validity of instrument

No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of exchange for the honour of the drawer shall, in a suit thereon by a HOLDER IN DUE COURSE, be permitted to deny the VALIDITY of the instrument as originally made or drawn.

The problem is based upon the privileges of a 'holder in due course'. A holder in due course gets a good title of the bill. Therefore, in the given problem, J is liable to pay the bill. L is a holder in due course, who got the bill in good faith and for value

Q58. A cheque payable to bearer is crossed generally and marked "not negotiable". The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B.

Answer:

Section 130 Not Negotiable Crossing

A cheque is said to contain a 'not negotiable crossing when the words 'not negotiable' are added to the crossing. It may be done in the case of general crossing or special crossing. The cheque nevertheless remains negotiable.

It is still transferable but the transferee cannot get title better than what transferor had. This means that is the title of the endorser is defective then the title of the endorsee (even if he is HIDE) will also be defective.

Section 128- Protection to Paying Banker for Payment in due course of CROSSED cheque
Where the banker has made payment in due course on a CROSSED cheque, the PAYING BANKER, and the DRAWER thereof, shall respectively be entitled to the same rights, as they would respectively be entitled to, if the amount of the cheque had been paid to by the TRUE OWNER thereof.

Section 131-Protection to Collecting Banker

A banker who has in GOOD FAITH and WITHOUT NEGLIGENCE received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment

Conclusion

(A) In view of Section 130 above, B, even though he was a holder in due course, did not acquire any title to the cheque as against its true owner. B is liable to repay the amount of the cheque to the true owner. He can, however, proceed against the person from whom he took the cheque.

(B) In view of Section 128 & 131 above, both the paying banker and the collecting banker would NOT be liable.

Q59. J. a shareholder of a Company purchased for his personal use certain goods from a Mall on credit. He endorsed a cheque drawn on the Company's account to the Mall towards the full payment of the bills. The cheque was dishonoured by the Company's Bank. J, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether J has committed an offence under Section 138 of the Act and decide whether he (J) can be held liable for the payment, for the goods purchase from the Mall.

Answer:

Section 138-Dishonour of cheque for insufficiency, etc., of funds in the account

Where any cheque drawn by a person on an ACCOUNT maintained by him with a banker for payment of any amount of money to another person from out of that ACCOUNT for the discharge, is dishonoured, such person shall be deemed to have committed an offence.

Although the J has a legal liability to refund the amount to the shopkeeper, J is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instrument Act, 1881. Therefore:

(1) J has NOT committed an offence under Section 138 of the Act.

(2) However, J is liable for the payments for the goods purchased to the shopkeeper.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



Q60. Mr. Pinku is a promoter who has taken a loan on behalf of company but he is neither a director nor a person in-charge of the company. He sent a cheque from the company's account to discharge its legal liability. Subsequently, the cheque was dishonoured and a complaint was lodged against him. Can he be held liable for an offence under Section 138 of the Negotiable Instruments Act, 1881?

Answer:

Section 138-Dishonour of cheque for insufficiency, etc., of funds in the account

Where any cheque drawn by a person on an ACCOUNT maintained by him with a banker for payment of any amount of money to another person from out of that ACCOUNT for the discharge, is dishonoured, such person shall be deemed to have committed an offence.

Section 141-Offences by companies

Every person who was in charge of conduct of the business of the company, as well as the company, Shall be deemed to be guilty of the offence, UNLESS he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Where it is proved that the offence has been committed with the consent or connivance of, or due to any neglect on the part of any DIRECTOR, MANAGER, SECRETARY or other OFFICER [DMSO] of the company such person [DMSO] shall also be deemed to be guilty of that offence.

Conclusion

In this case, Mr. Pinku, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company.

Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company.

Therefore, Mr. Pinku, has not committed an offence under section 138 of the Negotiable Instruments Act 1881 and he cannot be held liable for dishonour of the said cheque. However, the company and its Directors aware of the offence can be sued as per Sec 141.

Q61. Mr. Varsha donated 50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on he found that the NGO was a fraud and did not engage in philanthropic activities.

He gave a "stop payment" instruction to his bankers and the cheque was not honoured by the bank as per his instruction.

The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr. Varsha about the course of action available under the Negotiable Instruments Act, 1881.

Answer:

Sec 138: Dishonour of cheque- stop payment

One of the important conditions for initiating an action u/s 138 is that

The cheque was drawn to discharge a LEGALLY ENFORCEABLE debt or other liability.

However, any cheque given as gift or donation, or as d security or in discharge of a mere moral obligation, would be considered outside the purview of section 138.

Conclusion

In the given instance, Mr. Varsha donated Rs. 50,000 to NGO by cheque for sponsoring child education for 1 year. On founding that NGO was fraud, Mr. Harsha instructed bankers for stop payment. In lieu of that, NGO sent a demand notice and threatened to file a case against him.

Here the cheque is given as a donation for the sponsoring child education for 1 year and is not legally enforceable debt or other liability on Mr. Harsha. Therefore, he is not liable for the donated amount which is not honoured by the bank to the NGO.

Q62. Bhola drew a cheque in favour of Surendar. After having issued the cheque, Bhola requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of The Negotiable Instruments Act, 1881 whether the said acts of Bhola constitute an offence?

Answer:

Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person for the discharge of any debt or liability, the amount should be paid to such other person failing which it shall be deemed that the drawer has committed an offence.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act.

Conclusion

As per the facts stated in the question, Bhola (drawer) after having issued the cheque, informs Surender (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surender.

Accordingly, the act of Bhola, i.e., his request of stop payment constitutes an offence under Sec 138 of the Negotiable Instruments Act, 1881.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



Q63. Bhola drew a cheque in favour of Surendar. After having issued the cheque, Bhola requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of The Negotiable Instruments Act, 1881 whether the said acts of Bhola constitute an offence?

Answer:

Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person for the discharge of any debt or liability, the amount should be paid to such other person failing which it shall be deemed that the drawer has committed an offence.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act.

Q64. Mr. Manoj Malik, a major and Preet, a minor executed a promissory note in favour of Rimp. Examine with reference to the provisions of the Negotiable Instruments Act, 1881, the validity of the promissory note and whether it is binding on Mr. Manoj Malik and Preet.

Answer:

According to Section 26 of the Negotiable Instruments Act, 1881, every person competent to contract (according to the law to which he is subject to) has capacity to bind himself and be bound by making, drawing, accepting, endorsing delivering and negotiating an instrument. A party having such capacity may himself put his signature or authorize some other person to do so.

A minor may draw, endorse, deliver and negotiate an instrument so as to bind all the parties except himself. A minor may be a drawer where the instrument is drawn or endorsed by him. In that case he does not incur any liability himself although other parties to the instrument can be made liable and the holder can receive payment from any other party thereto. Therefore, in the instant case, the promissory note is valid and it is binding on Mr. Manoj Malik but not on Preet, a minor.

Q65. Mr. Mudit is the employee in Senior Research Analyst Private Limited. He went to a Super Mal, a departmental store, where he purchased some goods for his personal use on credit. Mr. Mudit gave a cheque drawn on the Senior Research Analyst Private Limited's account to Super Mall towards the full payment of the dues. The cheque was dishonoured by the company's bank. Mr. Mudit was neither a director nor a person in-charge of the company. Explain under the provisions of the Negotiable Instruments Act, 1881, whether Mr. Mudit has committed an offence under section 138.

Answer:

According to section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable.

According to section 141, if the person committing an offence under section 138 is a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, in this case, Mudit is neither a director nor a person-in-charge of the company and is not connected with the day -to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, Mudit has not committed an offence under section 138.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



OBJECTIVES

Q1. Multiple Choice Question

1. The Negotiable Instruments Act, 1881 is an Act to define and amend the law relating to:
 - a) cheques
 - b) bills of exchange
 - c) promissory notes
 - d) All of the above
2. "banker" includes:
 - a) Any person acting as an employee of any b) Any person acting as a banker and any bank and any post office saving bank
 - b) Any person acting as a banker and any bank and any post office saving bank. post office saving bank
 - c) Any person acting as an agent of any bank
 - d) Any person acting as a Managing Director of and any post office saving bank. any bank and any post office saving bank
3. Which is NOT an example of "Promissory Note":
 - a) "I acknowledge myself to be indebted to B in
 - b) Mr B, I.O.U '1,000.' ` 1,000, to be paid on demand, for value received."
 - c) "I promise to pay B or order '500"
 - d) None of the above
4. In a Promissory Note, how many parties are involved:
 - a) One
 - b) Two
 - c) Three
 - d) Four
5. Which is NOT correct about the "Promissory Note":
 - a) It contains a conditional undertaking.
 - b) It contains the amount mentioned on it.
 - c) It is an instrument in writing.
 - d) It is signed by the maker
6. The Negotiable Instruments Act, 1881 extends to:
 - a) Only to Capital cities of the States.
 - b) The whole of India.
 - c) The whole of India except the State of
 - d) The whole of India except the Union Jammu and Kashmir, Territories.
7. A bill of exchange, that is drawn accepted or endorsed without consideration is called
 - a) Accommodation bill
 - b) Promissory note
 - c) Trade bill
 - d) Bearer instrument
8. When an instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein, it is called:
 - a) Ambiguous
 - b) Inchoate
 - c) Escrow
 - d) Inland
9. Which of these is not a negotiable instrument as per the Negotiable
 - a) Bill of exchange
 - b) Delivery note
 - c) Bearer cheque
 - d) Share certificate
10. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the:
 - a) Preceding day
 - b) Next preceding business
 - c) Same day of next week
 - d) 3rd day following the day holiday
11. Holder day holiday in due course means any person:
 - a) Drawing the instrument.
 - b) Who for consideration takes the possession of a promissory note?
 - c) Named in the instrument to whom or to who order the money is directed to be paid.
 - d) None of the above

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1881



12. As per the RBI Act, which of the following negotiable Instruments can be payable to the bearer on demand?

- (a) Cheque
- (b) Hundi
- (c) Bank Draft
- (d) Promissory Note

13. Holder in due course means any person

- (a) Who for consideration becomes the possessor of the promissory note.
- (b) Named in the instrument to whom or to who order the money is directed to pay.
- (c) Drawing the instrument.
- (d) None of the above

14. Where cheque is crossed generally the banker on whom it is drawn

- (a) Shall not pay it to banker
- (b) Shall not pay it otherwise than to holder
- (c) Shall not pay it otherwise than to banker
- (d) None of the above

15. The Negotiable Instruments Act, 1881 extends to

- (a) The whole of India
- (b) Only to capital cities of the States
- (c) The whole of India except the Union Territories
- (d) The whole of India except the State of Jammu & Kashmir.

16. Which one of the following is not a type of endorsement in case of negotiable instrument

- a) Blank
- b) Full
- c) Written
- d) Restrictive

17. Writing of a person's name on the face or back of an instrument or on a slip of paper attached to it is known as:

- a) Endorsement
- b) Transfer
- c) Negotiation
- d) Transmission

18. Meaning of the Latin word 'Indorsum' is:

- a) Under the law
- b) Inside the box
- c) Upon the back
- d) With the bearer

19. Under the Negotiable Instruments Act, 1881, whether acceptance of a bill of exchange in the following situation shall be treated as qualified acceptance where the acceptor

- a) Undertakes to pay only ₹10,000 for a bill drawn for 15,000
- b) Declares the payment to be independent of any other event.
- c) Writes, Accepted, payable at ABC Bank.
- d) Writes, Accepted, payable at Delhi

20. Presentation for acceptance of the bill may not be excused in the following cases

- a) Where the drawee cannot be found with reasonable efforts
- b) Where the drawee is insolvent
- c) Where the drawee is a fictitious person
- d) Where the drawee is in a Special Economic Zone (SEZ)

21. If a minor draws, endorses, delivers or negotiates an instrument, such instrument binds

- a. All parties to the instrument including the minor
- b. Only the minor and no other parties to the instrument
- c. All parties to the instrument except the minor
- d. None of the above

22. A Formal notarial certificate attesting the dishonour of a bill or note is called

- a. Noting
- b. Protest
- c. Attestation of Dishonour
- d. Endorsement

23. In case of banker's refusal to honour the cheque in spite of sufficient funds in customers account, the banker is:

- a. Liable to compensate the drawer.
- b. Not liable to compensate the drawer
- c. Criminally liable under section 138.
- d. Liable to be delisted.

QUESTION BANK



CA AKASH AGARWAL

NEGO, 1681



Q2. True or False

1. "I acknowledge myself to be indebted to B in '1,000, to be paid on demand, for value received." is a promissory note.
2. Section 5 of the NI Act deals with Holders in due course.
3. A 'Cheque' is a Bills of exchange and has been defined under Banking Regulation Act.
4. All offences under Chapter XVII shall be tried by either a Metropolitan Magistrate or a Judicial Magistrate of the first class.
5. Courts that can entertain any offence punishable under section 138 are, Court not inferior to that of a Judicial Magistrate of the first class or Court not inferior to that of a Metropolitan Magistrate.
6. A promissory note must be conditional.
7. Bill of exchange is an undertaking to pay.
8. A holder is not having right to duplicate of lost bill, before it is overdue
9. Share certificate is a negotiable instrument.
10. The 1st endorsement of an instrument can be made by the banker

Q3. Fill in the blanks

1. The transaction of negotiable instrument requires at least _____ persons.
2. The person named in the instrument, to who or to whose order the money is by the instrument directed to be paid is, called the _____.
3. Negotiation is of two types, namely, _____.
4. A cheque is a bill of exchange drawn on a specified _____ on demand.
5. Clearing house is managed by _____.
6. Draft cannot be drawn on _____.
7. Indorsement is of two types, namely, _____.
8. A negotiable instrument indorsed in blank is payable to the _____.
9. If the amount is paid after due date, the interest is payable at _____ when no interest rate has been specified in the instrument.
10. The dishonour of the instrument may be due to _____ and _____.
11. When a bill is drawn, accepted or endorsed without consideration is known as _____.
12. Instrument incomplete in some respect is known as _____.
13. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on _____.
14. Negotiable instruments are those documents which are used to transfer money between _____ persons.
15. The dishonour of the instrument may be due to non-acceptance and _____.

16) The dishonour of the instrument may be due to _____

17) When the drawee accepts the bills subject to qualification is known as _____

ANSWERS

MCQ	TRUE/FALSE	FILL IN THE BLANKS
1. D	1. TRUE	1) 2
2. B	2. FALSE	2) Payee
3. B	3. FALSE	3) Negotiation by delivery, negotiation by indorsement
4. B	4. TRUE	4) banker
5. A	5. TRUE	5) Reserve bank of India
6. B	6. FALSE	6) Private individual
7. A	7. FALSE	7) Indorsement in blank, indorsement in full
8. C	8. FALSE	8) bearer
9. D	9. FALSE	9) 18%
10. A	10. FALSE	10) Non acceptance, non-payment
11. B		11) Accommodation bill
12. A		12) Inchoate instrument
13. A		13) Demand
14. B		14) Designated
15. A		15) Non-payment
16. A		16) Non-payment, non-acceptance
17. A		17) Qualified acceptance
18. C		
19. A		
20. D		
21. C		
22. B		
23. A		

QUESTION BANK

CA AKASH AGARWAL

FA, 1948

1. FACTORIES ACT, 1948

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. June 2019]

[4 Marks]

Q1. State the provision of annual leave with wages in respect of workers under Factories Act, 1948.
As per Section 79 of Factories Act, 1948, every worker who has worked for a period at least 240 days in a factory during a calendar year shall be allowed leave during subsequent calendar year with wages for a number of days calculated at the rate of:

- If an adult, 1 day for every 20 days of work performed by him during the previous calendar year
- If a child, 1 day for every 15 days of work performed by him during the previous calendar year
- The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of at least 240 days:
 - Days of lay off, by agreement or contract or as permissible under the standing orders
 - In the case of a female worker, maternity leave for any number of days not exceeding 12 weeks and
 - The leave earned in the year prior to that in which the leave is enjoyed.
 - The leave admissible shall be exclusive of all holidays whether occurring during or at either end of the period of leave.
 - In calculating the leave fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

[PP. Dec 2017]

[9 Marks]

Q2. Who is the occupier of a factory under Factories Act, 1948 (except the Ship & Ship related business)?

OR

Who is occupier under the Factories Act, 1948?

[Dec. 2017]

Answer:

As per Section 2(n) of Factories Act, 1948, the person who has the ultimate control over the affairs of the factory shall be considered as occupier.

- In the case of a firm or other association of individuals, any one of the individual partners or members.
- In the case of a company, any one of the directors.
- In the case of a factory owned or controlled by the central Govt. or any State Govt. or any local Authorities, the person or persons appointed to manage the affairs of the factory by the Central Govt. State Govt. or Local Authorities; thereof shall be deemed to be the occupier.
- In the case of a ship,

Which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire

The owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for or under—

- Section 6, Section 7, Section 7A, Section 7B, Section 11 or Section 12
- Section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lightning or around the dock;
- Section 18, Section 19, Section 42, Section 46, Section 47 or Section 49, in relation to the workers employed on such repair or maintenance.

The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for.

The purposes of any matter provided for by or under Section 13, Section 14, Section 16 or Section 17 (save as otherwise provided in this proviso) or Chapter IV (except Section 27) or Section 43, Section 44 or Section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or Section 108, Section 109 or Section 110, in relation to—

- The workers employed directly by him, or by or through any agency; and
- The machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

Note: For 3 marks students need not write the points related to ship.

[PP. June 2017 & Dec 2021]

[3 Marks]

Q3. Define Hazardous Process under The Factories Act, 1948.

Answer:

Ans. As per Section 2(cb) of Factories Act, 1948, any process or activity in relation to an industry specified to the 1st Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

- 1) Cause material impairment to the health of the persons engaged in or connected therewith, or
- 2) Result in the pollution of the general environment; Is called hazardous process.

QUESTION BANK



CA AKASH AGARWAL

FA, 1948



The State Government may, by notification in the Official Gazette, amend the 1st Schedule by way of addition, omission or variation of any industry specified in the said Schedule.

[PP. June 2017, MTP June, 2019]

[5 Marks]

Q4. What are the responsibilities of an occupier in a factory?

Answer:

As per Section 41B of Factories Act, 1948, the occupier of factory has to make compulsory disclosures relating to:

- Detailed policy made with respect to the health and safety of the workers
- To disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory.
- To draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

As per Section 41C of Factories Act, 1948, the occupier has specific responsibilities in relation to hazardous processes:

- He has to maintain up-date health records of the employees.
- He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factor.
- Provide for medical examination of every worker before assignment of work, while continuing the work & after he has ceased to do the job, at intervals not exceeding 12 months.

[PP. Dec 2017]

[5 Marks]

Q5. Short note on: Cleanliness of factory

Answer:

As per Section 11 of Factories Act, 1948, every factory shall be kept clean and free from effluvia (foul smell) arising from any drain, privy or other nuisance, and in particular:

- Removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same.
- Cleaning of the floor of every workroom once in every week by washing with disinfectant or by some other effective method'
- Providing effective drainage for removing water to the extent possible.
- All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years.
- To ensure that interior walls and roofs etc. are kept clean the following is to be complied with:
 - White wash or colour wash should be carried out at least once in every period of 14 months.

- Where surface has been painted or varnished, repair or re-varnished should be carried out once in every 5 years, if washable then once in every period of 6 months,
- Where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
- The dates on which such processes are carried out shall be entered in the prescribed register.

[PP. June 2018]

[8 Marks]

Q6. Critically examine the duties of certified Act, surgeon under the Factories 1948.

Answer:

As qualified per medical Section 10 of Factories Act, 1948, the State Government may appoint practitioners to be certifying surgeons for the Act within purposes of this such local limits or for such factory or class or as it description of Factories may assign to them respectively.

With approval of State Government, the certifying surgeon may authorise any medical practitioner to act as certifying surgeon.

The duties of certified surgeons are as follows:

- The examination and certification of young persons. The examination of person engaged in factories in such dangerous occupations or processes as may be prescribed.
- The exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where:
 - Cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
 - By reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
 - Young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

[PP. Dec. 2019 & MQP Dec 2024]

[8 Marks]

Q7. Discuss the welfare measures to be taken in a factory for the workmen employed therein as per the Factories Act, 1948.

Or

"Chapter V provides the welfare measures to be taken in a factory"-examine the measures prescribed in the Factory's Act 1948 to be provided by the factory to their workmen.

Answer:

QUESTION BANK



CA AKASH AGARWAL

FA, 1948



The following are the welfare measures prescribed in the Factories Act, 1948 to be provided by the factory to their workmen:

➤ **Washing facilities: Section 42**

In every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers. Separate and adequately screened facilities shall be provided for the use of male and female workers.

➤ **Facilities for storing and drying clothing: Section 43**

The State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

➤ **Facilities for sitting: Section 44**

Suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in as standing position, in order that they make take advantage of any opportunities for rest which may occur in the course of their work.

➤ **First aid appliances: Section 45**

First aid appliances shall be provided and maintained so as to be readily accessible during all working hours or cupboards equipped with the prescribed contents and the number of such boxes or cupboards to be provided and maintained shall not be less than for every 150 workers at any one time in the factory. Each first aid box or cupboard shall be kept in charge of a separate reasonable person who holds a certificate in the first aid treatment recognized by the State Government and he should always be readily available during the working hours of the factory. In a factory where more than 500 workers are employed an ambulance of the prescribed size containing the prescribed equipment, nursing staff etc., shall be provided and made readily available at all times.

➤ **Canteens: Section 46**

If more than 250 workers are employed in a factory a canteen or canteens shall be provided and maintained by the occupier for the user of the workers. The items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs shall be borne by the employer.

➤ **Shelters, rest rooms and lunch rooms: Section 47**

If more than 150 workers are employed adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water shall be provided and maintained for the use of the workers. The same shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

➤ **Crèche: Section 48**

If more than 30 women workers are employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such Women. The same shall be adequately ventilated and shall be maintained in clear and sanitary conditions and under the charge of women trained in the care of children and infants.

➤ **Welfare Officers: Section 49**

If 500 or more than workers are employed in a factory, the occupier shall employ in the factory such number of welfare officers as may be prescribed. An Assistant Personnel Officer cannot be held as a Labour Welfare Officer just because as an Assistant and Personnel Officer he was looking after the problems of the labourers and the welfare of the labourers.

[PP. Dec. 2021, June 2024]

[7 Marks]

Q8. Discuss the different powers that can be exercised by an inspector under the Factories Act.
Or

Prepare a list of different powers that can be exercised by an inspector under the factories Act, 1948

Answer:

As per Section 8 of Factories Act, 1948, the State Government may appoint a person possessing the prescribed qualifications to be inspector for the purpose of this Act and may also assign local limits as may be think fit by the said government.

As per Section 9 of the said Act the following powers can be exercised by the inspector:

- He may enter to any place which is used, or which has reason to believe is used as a factory,
- He can examine the premises, plant, machinery, article or substance,
- He may inquire into any accident or dangerous occurrence whether resulting in bodily injury, disability or not take on the spot statements of any person which he may consider necessary for such inquiry
- He can require the production of any document relating to factory,
- He may seize or take copies of any register, record or other documents of any portion thereof as he may consider necessary,
- He can take possession of any article or substance or part thereof and detain it for so long as is necessary for such examination,
- He may direct the occupier that any premises or any part thereof, or anything lying therein shall be left undisturbed for so long as he thinks it necessary,
- He may take measurements or photographs & make any such recordings as he considers necessary,
- He can exercise such other powers as may be prescribed.

RTP Dec 2018

Q9. Discuss the general duties of an occupier under the Factories Act, 1948

Answer:

General duties of an occupier are discussed in sec 7A of the Factories Act, 1948. These are as follows:

Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

QUESTION BANK



CA AKASH AGARWAL

FA, 1948



Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include –

- 1) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- 2) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- 3) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety, of all workers at work;
- 4) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
- 5) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
- 6) Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

[MQP, Dec. 2024]

[7 Marks]

Q10. Discuss the procedures to be adopted on the safety of working place in a factory under Chapter IV of the factories act 1948.

Answer:

Chapter IV of the Factories Act, 1948 (sections 21 to 41) prescribes the procedures to be adopted on the safety of the working place in a factory. The factory is to take safety measures in respect of the following-

- Fencing of machinery-
- Work on or near machinery in motion -
- Employment of young persons on dangerous machines;
- Striking gear and devices for cutting off power;
- Self-acting machines;
- Casing of a new machinery;
- Prohibition of employment of women and children near cotton openers;
- Lifting machines, chains, ropes and lifting tackles;
- Revolving machinery;
- Floors, stairs and means of access;
- Pits, sumps openings in floors etc.,
- Excessive weights;

- Protection of eyes;
- Precaution against dangerous fumes, gases, etc.,
- Precautions regarding the use of portable electric light;
- Explosive or inflammable dust, gas etc.,
- Precaution in case of fire;
- Safety on buildings and machinery;
- Maintenance of buildings;
- Appointment of safety officers.

[PP JUNE 2018]

[5 Marks]

Q11. Write short note on Manufacturing process under the Factories Act, 1948.

Ans: Under Section 2(k) of Factories Act 1948 define 'manufacturing process' as under any process for-

- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- pumping oil, water, sewage or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

EXTRA THEORY QUESTIONS

STUDY MATERIAL

Q12. Define Factory as per Factories Act.

Ans: Section 2(m) of Factories Act, 1948 defines the term 'factory' as any premises including the precincts thereof whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or whereon twenty or more workers are working, or were working on any of the preceding twelve months, and in any part of which a manufacturing process is being carried on without aid of power, or is ordinarily so carried on, but does not include a mine or mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

QUESTION BANK



CA AKASH AGARWAL

FA, 1948



STUDY MATERIAL

Q13. Write short note on:

- (a) Carry forward of leave
- (b) Encashment of leave

Ans: If a worker does not in any calendar year take the whole of the leave allowed to leave not taken him shall be carried over to the succeeding year. The total number of leave Kue that may be carried forward shall not exceed 30 days in the case of an adult or 40 in case of a child. A worker, who has applied for leave with wages but has not been granted, shall be entitled to carry forward the leave refused without any limit.

(i) Section 79(3) provides that if a worker is discharged or dismissed from services or quits his employment or is superannuated or dies while in service, during course of the calendar year, he or his heir or nominee, shall be entitled to wages in lieu of the quantum of leave to which was entitled immediately before such termination of his services. Such payment shall be made before the expiry 5 the second working from date of discharge, dismissal or quitting and where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

STUDY MATERIAL

Q14. Discuss the provisions regarding first aid appliances.

Ans: Section 45 provides that first aid appliances shall provided and maintained so as to be readily accessible during all working hours or cupboards equipped with the prescribed contents and the number of such boxes or cupboards to provided and maintained shall not be less than for every 150 workers at any one time in the factory. Each first aid box or cupboard shall be kept in charge of. a separate reasonable person who holds a certificate in the first aid treatment recognized by the State Government and he should always be readily available during working hours of the factor.

In a factory where more than 500 workers are employed an ambulance of the prescribed size containing prescribed equipment, nursing staff etc., shall provided and made readily available at all times.

STUDY MATERIAL

Q15. Short note on prohibition of employment of young persons.

Ans: Section 71 provide that no child shall be employed or permitted to work in any factory for more than four and a half hours in any and during night. The period of work of all children employed in factory shall be limited to two shifts which shall not overlap or spread children employed 5 over more than five hours each. Each child shall be employed in only one of the relays

which shall not, except with the previous permission. No female child shall be allowed to work in any factory except between 8 A.M. and 7 P.M.

Q16. Short notes on

- (i) Register of Child Workers.
- (ii) Wages during leave period
- (iii) Overtime
- (iv) Working hours

Ans:

(i) Section 73 provides that the Manager of every factor in which children are employed shall maintain a register of child workers showing- the name of each child worker in the factory; the nature of his work; the group, if any, in which is included; where SIU group works on shifts, the relay to which he is allotted; and the number of his certificate of fitness granted under Section 69.

(ii) Section 80 provides that worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which actually worked during the month immediately preceding his leave, exclusive of any over time and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through concessional sale to worker of food grains and other articles. In case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of the total full time earnings for the days on which he actually worked during the last calendar month preceding SIU leave, in which actually worked.

(iii) Section 59 provides that where a worker works in a factory for more than 9 hours in any or more than 48 hours in any week, he shall, in respect of the overtime work, be entitled to wages at rate of twice the ordinary rate of wages. The term ordinary rate of wages is defined as the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale grains and other articles, as the worker is for the time being entitled 01 workers of food 01 but does not include a bonus and wages for overtime work. Where any workers are paid on a piece rate basis, the time rate shall be deemed to be equivalent to the daily average of their full time earnings for days on which they actually worked on same or identical job during the month immediately preceding calendar month during which overtime work was done and such time rates shall be deemed to be ordinary rate of wages of those workers. In National Textiles Corporation (D.P.&R) Limited Unit- Mahalakshmi Mills, Beawar V. Labor Court, Jaipur- 1997 LLR 518 it was held that Section 59 creates an obligation on the employer to pay extra wages for overtime if a worker works for more than 9 hours in any day or for more than 48 hours in any week

QUESTION BANK



CA AKASH AGARWAL

FA, 1948



(iv) Chapter VI of the Act provides for the working hours of adults. This chapter provides for working hours in a day, weekly working hours, weekly holidays, intervals for rest. Spread over of duty, night shift etc.,

Section 54 provides that no adult worker shall be required or allowed to work in a factory for more than nine hours in any day.

Section 55 provides that the periods of work of adult workers in a factory each shall be so fixed that no period shall exceed five hours and that worker shall work for more than five hours before has had an interval for rest of at least half an hour.

STUDY MATERIAL

Q17. Discuss: Rights and obligation of a worker.

Ans: Rights:

Every worker shall have right to

- Obtain from the occupier, information relating to worker's health and safety at work.
- Get trained within the factory wherever possible, or at a training centre
- Represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health and safety in the factory.

Obligations: No worker in a factory-

- Shall wilfully interfere with or misuse appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein
- Shall wilfully and without reasonable cause op anything likely to endanger himself or others; and
- Shall wilfully neglect make use of any appliance or other thing provided in the 01 factory for the purpose of securing the health and safety of the workers therein.

STUDY MATERIAL

Q18. Discuss the Penalties under Factories Act.

Ans: Section 92 provides that there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to Rs. 1 lakh or with both. If the contravention is continued after conviction, with a further fine which may extend to Rs. 1000/- for each day on which the contravention so continued.

If the contravention resulted in an accident causing death or serious bodily injury, the fine shall not be less than Rs. 25,000/- in the case of an accident causing death, and Rs. 5000/- in the case of accident causing serious bodily injury.

Section 94 provides that if any person who has been convicted of any offence punishable under Section 92 of the Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 2 lakhs or with both.

The Court may, for any adequate and special reasons recorded in writing, impose of a fine of less than Rs. 10,000/-. No cognizance shall be taken of any conviction made more than 2 years before the commission of the offence for which the person is subsequently convicted

Penalty for obstructing Inspector

Section 95 provides that whoever-

- wilfully obstructs an Inspector in exercise of any power conferred on him; or
- fails to produce on demand any registers or other documents in his custody before the Inspector conceals or prevents any worker in a factory from appearing before; or
- being examined by, an Inspector shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 10,000/- or with both.

Penalty for contravention of the provisions relating to hazardous process

Section 96A provides that whoever fails to comply with or contraventions any of the provisions of Section 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to Rs. 2 lakhs and in case of the failure or contravention continues, with additional fine which may extend to Rs. 5000/- for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years

[PP JUNE 2014]

[3 MARKS]

Q19. Give correct answer if following statements are wrong (Factories Act, 1948):

- No child who has not completed his 15 years shall not be required or allowed to work in any factory.**
- No adult workers shall be required or allowed to work in a factory for more than forty hours in any week.**
- Subject to the provisions of Sec. 51, no adult workers shall be required or allowed to work in a factory for more than 8 hours in any day.**

QUESTION BANK



CA AKASH AGARWAL

FA, 1948



(iv) No women shall be required or allowed to work in any factory except between the hours of 8.00 a.m. and 8.00 p.m.

Ans.

- i) The child who has completed his 14th year shall be allowed to work in any factory.
- ii) Adult workers shall be required or allowed to work in a factory for not more than 48 hours in any week.
- iii) (Subject to the provisions of Sec. 51, no adult workers shall be required or allowed to work in a Factory for more than 9 hours in any day.
- iv) No women shall be required or allowed to work in any factory except between the hours of 6.00 a.m. and 7.00 p.m.

[PP DEC 2014]

[2 MARKS]

Q19. Give correct number of workers based on Factories Act, 1948, in respect of following:

- (i) In every factory wherein more than 100 workers are ordinarily employed, adequate shelters or rest rooms and suitable lunch room shall be provided.
- (ii) In every factory where more than 250 workers are ordinarily employed, there shall be ambulance room.
- (iii) In every factory wherein 1000 or more workers are ordinarily employed, there shall be welfare officer.
- (iv) In every factory where in 50 workers are employed, the factory shall provide first aid box/first aid appliances.

Ans.

- (i) In every factory wherein more than 150 workers are ordinarily employed, adequate shelters or rest rooms and suitable lunch room shall be provided
- (ii) In every factory where more than 500 workers are ordinarily employed, there shall be ambulance room.
- (iii) In every factory wherein 500 or more workers are ordinarily employed, there shall be welfare officer.
- (iv) In every factory where in 150 workers are employed, the factory shall provide first aid box/first aid appliances.

OBJECTIVES

Q1. Multiple Choice Question

1. Under Factories Act, 1948, Certificate of fitness to be young worker is to be granted by –
 - (a) Occupier of the factory
 - (b) Inspector of the factory
 - (c) Certifying surgeon
 - (d) None of the above
2. Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are
 - (a) Under the employment
 - (b) Drawing the pension
 - (c) On unauthorised leave
 - (d) At work in factory
3. Every occupier shall ensure the health, safety and welfare of all workers
 - (a) While employer desires so
 - (b) Till life time
 - (c) Till they are employed with the factory
 - (d) While they are at work in the factory
4. No female child shall be allowed to work in any factory except between
 - (a) 8 AM to 7 PM
 - (b) 6 AM to 6 PM
 - (c) 6 AM to 7 PM
 - (d) 10 AM to 5 PM
5. No child shall be allowed to work in a factory unless he has completed his.
 - (a) 12 years
 - (b) 14 years
 - (c) 16 years
 - (d) 18 years

QUESTION BANK



CA AKASH AGARWAL

FA, 1948



6. Section ___ deals with appointment of Welfare officers.

- (a) Sec 45
- (b) Sec 49
- (c) Sec 51
- (d) Sec 55

7. Penalty for Double Employment of a child

- (a) Rs. 2500
- (b) Rs. 5000
- (c) Rs. 500
- (d) Rs. 1000

8. Who is the Chairman of Site Appraisal Committee?

- (a) Chief Inspector of the State
- (b) Chief Factory Officer of the State
- (c) Chief Labour Officer of the State
- (d) Chief Welfare Officer of the State

9. Who has the power to make rules on approval, licensing and registration of factories?

- (a) Central Government
- (b) State Government
- (c) MCA
- (d) Labour Commissioner

10. ___ is not a statutory welfare facility under the Factories Act.

- (a) Creche
- (b) Canteen
- (c) Transport
- (d) First Aid

11. What is the maximum amount of fees to be paid for Licensing process?

- (a) 5 years
- (b) 1 year
- (c) 3 years
- (d) 7 years

12. Fitness certificate granted is valid for ___

- (a) 10 months
- (b) 24 months
- (c) 6 months
- (d) 12 months

13. Shelter rooms with suitable lunchrooms are to be provided, if more than ___ workers.

- (a) 100
- (b) 250
- (c) 500
- (d) None of the above

14. Compensatory holidays are to be availed within ___ months.

- (a) 1
- (b) 2
- (c) 6
- (d) 9

15. How many days in advance does the occupier of a factory premises gives notice of occupancy to the chief inspector?

- (a) 15
- (b) 20
- (c) 30
- (d) 25

16. As per sec2 of Factories Act, who is an adult?

- (a) A person who has completed 21 years of age
- (b) A person who has completed 24 years of age
- (c) A person who has completed 19 years of age
- (d) A person who has completed 18 years of age

17. Facilities for storing and drying clothing, is provided in section ___ of the Factories Act, 1948.

- (a) Sec 34
- (b) Sec 22
- (c) Sec 43
- (d) Sec 28

QUESTION BANK



CA AKASH AGARWAL

FA, 1948



18. Restriction on double employment is provided in section ____ of the Factories Act, 1948.

- (a) Sec 72
- (b) Sec 49
- (c) Sec 60
- (d) Sec 59

19. Section 2(g) under Factories Act, 1948 defines:

- (a) Factory
- (b) Manufacturing Process
- (c) Worker
- (d) Occupants

20. Creche is mandatory under the Factories Act where _____ Women workers are employed.

- (a) 20
- (b) 100
- (c) 30
- (d) 250

21. Leave with wages is allowed for employees if they work for ____ days in a month.

- (a) 15
- (b) 25
- (c) 20
- (d) 28

22. Under the Factories Act, 1948 the working hours of 8 per day and 48 per week.

- (a) Include spread over
- (b) Are minimum working hours
- (c) Include rest interval period
- (d) Do not include rest interval period

23. Section 28 of the Factories Act, 1948 deals with:

- (a) Investment allowance
- (b) Hoists and Lifts
- (c) Precautions
- (d) Safety of buildings

24. Which of the Following come under safety provisions?

- (a) Lighting
- (b) Creche
- (c) Self acting machines
- (d) Ventilation and Temperature

25. Section ____ of the Factories Act, 1948 deals with annual leave with wages.

- (a) Sec 27
- (b) Sec 5
- (c) Sec 86
- (d) Sec 79

Q2. True or False

1. A dismissed employee, reinstated with back wages is entitled to bonus
2. A woman employee may be allowed to work between 6 p.m. and 6 a.m
3. In case of a company, any one of the directors shall be deemed to be the occupier of the factory.
4. White wash or colour wash should be carried out at least once in every period of 12 months.
5. Double employment is allowed in factories act.
6. Strike period is not counted as duty for the purposes of computation of the period of 240 days meant for calculation of leave entitlement.
7. Factories Act is an environmental legislation.
8. Factories Act is meant to provide protection to the workers from being exploited by the greedy business Establishments.
9. The Factories Act does not extend to the state of Jammu & Kashmir.
10. All the workers employed by a construction company would attract the definition of the term Worker' as per Factories Act, 1948.
11. The Central Government may make rules relating to approval, licensing and registration of factories.
12. Power to de-license and deregister the factories is with the State Government
13. All doors, windows and other framework of the factory which are of wooden or metallic shall be kept painted or varnished at least once in every five years.
14. As per the Factories Act, there shall be in every workroom in a factory at least 15.2 cubic meters of space for every worker employed therein.
15. The central government has the power to appoint a Site Appraisal Committee.

QUESTION BANK



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FA, 1948



16. Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within 90 days.
17. There should be an ambulance of the prescribed size containing the prescribed equipment if there are more than 750 workers.
18. The certificate granted by the certifying surgeon shall be valid for a period 12 months from the date thereof.
19. Age of adolescent worker is 18 years.
20. Certificate of fitness to be young worker is to be granted by Inspector of the factory.
21. White wash or color wash should be carried out at least once in every period of 60 months.
22. Compensatory holidays are to be availed within 2 months.
23. Weekly holiday shall be Last day of the week.
24. Fencing of machinery is a Welfare measure.
25. Precaution against dangerous fumes, gases are welfare measures.
26. Appointment of safety officers is a welfare measure.
27. Employment of young persons is a welfare measure.
28. Artificial humidification is related to the health aspect of the worker.
29. The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act.
30. Leave may be availed on oral request to the Supervisor

Q3. Fill in the Blanks

1. The wage period shall not exceed ____
2. ____ of a factory as the person who has the ultimate control over the affairs of the
3. The occupier shall, at least ____ before he begins to occupy or use any premises as a factory, send to the Chief Inspector, a written notice.
4. No child who has not completed his ____ shall be required or allowed to work in any factory.
5. No adult worker shall be required or allowed to work in factory for more than ____ in any day, without specific approval from The Inspector of Factories.
6. Every adult worker who has worked for a period ____ or more in a factory during a calendar year shall be allowed leave with wages for one day for every ____ of work performed by him during the previous calendar year.
7. In respect of overtime work, the employee is entitled to wages at the rate of ordinary rate of ____ his wages.
8. The total number of leave that may be carried forward shall not exceed ____ in the case of adult or ____ in the case of child worker.
9. Occupier of a factory has ____ ordinarily employed.
10. Occupier of every factory shall provide and maintain suitable room or rooms for the use of the children under the age of six years of women workers where the number of such Women workers exceed ____.
11. Safety Officer is required to be appointed where more than ____ workers are ordinarily employed.
12. If more than ____ workers are employed in a factory, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.
13. A child who has completed his 14th year of an adolescent shall not be allowed to work in any factory unless ____ granted in the custody of the manager of the factory.
14. Section 7 of the Factories Act, 1948 provides that the occupier shall, at least ____ days before he begins to occupy or use any premises as a factory, send to the Chief Inspector, a written notice.
15. There shall be in every workroom in a factory at least ____ cubic meters of space for every worker employed therein.
16. Where more than ____ workers are employed, provision shall be made for cool drinking water during hot weather.
17. The water points shall be away ____ meters from any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination.
18. Section 71 provide that no child shall be employed or permitted to work in any factory for more than ____ hours in any day and during night.
19. The period of work of all children employed in a factory shall be limited to ____ shifts which shall not overlap or spread over more than ____ hours each
20. Section ____ provides that the Manager of every factory in which children are employed shall maintain a register of child workers.
21. Chapter ____ of the Act deals with annual leave granted to the workers with wages.
22. Section 56 provides that the periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest, they shall not spread over more than ____ hours in any day.
23. Section 51 provides that no adult worker shall be required or allowed to work in a factory for more than ____ hours in any week.
24. Section 41D provides that the ____ Government is having the power to enquire standards of health and safety observed in a factory.
25. Section ____ of the Factories Act, 1948 provides for the penalty for obstructing Inspector.

QUESTION BANK



CA AKASH AGARWAL

DOGA, 1972



ANSWERS

MCO	TRUE or FALSE	FILL UPS
1. C	1. True	1. One month
2. D	2. False	2. Occupier
3. D	3. True	3. 15 days
4. A	4. False	4. 14 hour
5. B	5. False	5. 9 hour
6. B	6. True	6. 240 days ; 20 days
7. D	7. False	7. Twice
8. A	8. True	8. 30 days 40 days
9. B	9. False	9. Ultimate
10. C	10. True	10. 30
11. A	11. False	11. 1000
12. D	12. True	12. 250
13. D	13. True	13. A certificate of witness
14. B	14. False	14. 15
15. A	15. False	15. 14.2
16. D	16. True	16. 250
17. B	17. False	17. Six
18. C	18. True	18. Four and half
19. B	19. False	19. Two ; five
20. C	20. False	20. 73
21. A	21. False	21. VIII
22. D	22. True	22. Half
23. B	23. False	23. 48
24. D	24. False	24. Central
25. D	25. False	25. 2 lakhs
	26. False	
	27. True	
	28. True	
	29. True	
	30. False	

2. PAYMENT OF GRATUITY ACT, 1972

PAYMENT OF GRATUITY ACT, 1972

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. Dec 2017, Dec 2021, Dec 2022 & MQP Dec 2023]

[5Marks]

Q1. Discuss the procedure for determination of the amount of gratuity as per section 7 of the Payment of Gratuity Act, 1972.

Or

Discuss the procedure for determination of the amount of gratuity.

Or

What is the procedure of determining the amount of gratuity as per Payment of Gratuity Act, 1972?

Answer:

- As per Section 7(1) of the Payment of Gratuity Act, 1972, an eligible person or an authorized person, acting on his behalf shall send a written application to an employer for payment of gratuity.
- As per Section 7(2) of the Payment of Gratuity Act, 1972, as soon as the gratuity becomes payable the employer shall whether the employee has made application or not, determine the amount of gratuity & shall give notice to the person to whom the gratuity is payable and also to the controlling authority, specifying the amount of gratuity so determined.
- As per Section 7(3) of the Payment of Gratuity Act, 1972, the employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable.
- If it is not paid within stipulated period the employer is liable to pay interest at the rate of 10 % per annum.
- If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.
- If the claim for gratuity is not found admissible, the employer shall issue a notice in form 'M' to the applicant employee, nominee or legal heir as the case may be specifying the reasons why the claim for gratuity is not considered admissible
- In either case a copy of the notice shall be endorsed to the controlling authority.

QUESTION BANK



CA AKASH AGARWAL

POGA, 1972



[PP, July 2023]

[7 Marks]

Q2. Explain provisions relating to the notice for payment of gratuity.

Answer:

As per Rule 7 for Payment of Gratuity, the employer shall within 15 days of the receipt of an application shall endorse a copy of notice to Controlling Authority & shall -

- If claim is found admissible on verification, issue a notice either by personal service after taking receipt or by registered post with acknowledgement due in Form L to the applicant employee, nominee, or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the 30th day after the date of receipt of the application, for payment thereof.
- If the claim is not found admissible, issue a notice in either by personal service after taking receipt or by registered post with acknowledgement due Form M to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible.
- In case payment of gratuity is due to be made in the employer's office, the notice in Form L shall specify the date fixed for the payment. The date can be re-fixed by the employer if an employee makes a written application for re-fixing it stating the reasons for his absence.
- If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. The time limit specified for issuance of notices shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.
- A notice in Form L or Form M shall be served on the applicant.

[MTP, Dec. 2020 & Dec 2022]

[5 Marks]

Q3. Describe the procedure for mode of payment of gratuity.

Answer:

- Rule 9 provides that the gratuity payable under the Act shall be paid in cash or, if so desired by the payee, in Demand Draft or bank Cheque to the eligible employee, nominee or legal heir, as the case may be.
- In case the eligible employee, nominee or legal heir, as the case may be, so desires and the amount of gratuity payable is less than one thousand rupees, payment may be made by postal money order after deducting the postal money order commission there for from the amount payable.
- Intimation about the details of payment shall also be given by the employer to the controlling authority of the area.

- In the case of nominee, or an heir, who is minor, the controlling authority shall invest the gratuity amount deposited with him for the benefit of such minor in term deposit with the State Bank of India or any of its subsidiaries or any Nationalized Bank.

[MTP, June 2018]

[5 Marks]

Q4. Protection of Gratuity

Answer:

- Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.
- Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.
- Nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non-employment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.

[PP, Dec 2023]

[7 Marks]

Q5. Analyze the different points to be noted for filing nomination for receiving the gratuity under the Payment of Gratuity Act, 1972.

Answer:

Section 6 of the Payment of Gratuity Act, 1972 provides for filing nomination for receiving the gratuity after the death of the employee. The following are the points to be noted in respect of nomination-

- Each employee, who has completed one year of service, shall make nomination in Form - E.
- He may distribute the amount of gratuity payable to him under this Act amongst more than one nominee.
- If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.
- If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such

QUESTION BANK



CA AKASH AGARWAL

POGA, 1972



nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family:

- A nomination may, subject to above, be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so;
- If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest;
- Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

Rule 6 (1) provides that a nomination shall be submitted in duplicate by personal service by the employee, after taking proper receipt or by sending through registered post acknowledgement due to the employer,

- in the case of an employee who is already in employment for a year or more on the date of commencement of these rules, ordinarily, within ninety days from such date, and
- in the case of an employee who completes one year of service after the date of commencement of these rules, ordinarily within thirty days of the completion of one year of service. Nomination in Form 'F' shall be accepted by the employer after the specified period, if filed with reasonable grounds for delay, and no nomination so accepted shall be invalid merely because it was filed after the specified period.

[PP, Dec 2023]

[7 Marks]

Q6. Write short note on: Forfeiture of gratuity.

[June 2013, 4 Marks]

Or

An employee governed by the Payment of Gratuity Act, 1972 committed a theft in the course of his employment and consequently his service was terminated. Hence, he is not entitled to gratuity. Comment.

[June 2015, 2 Marks]

Or

Gratuity cannot be forfeited in any circumstances. Do you agree? Answer based on Payment of Gratuity Act, 1972.

[June 2015, 2 Marks]

Or

Ajit an employee of Supertech Copper Ltd., continued to occupy the quarter of the company for 8 months after superannuation, company decided to forfeit the amount of gratuity of Ajit. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act 1972.

[Dec. 2015, 3 Marks] (RTP JUNE 2018)

Or

Under what circumstances the gratuity payable to an employee is forfeited?

[June 2016, 8 Marks]

Or

Mr. Gill, an employee of M/s Sonabheel lea Ltd., continued to occupy the quarter of the company for 8 months after superannuation, company decided to forfeit the amount of gratuity of Mr Gill. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

[Dec. 2018, 10 Marks]

Or

Anurag an employee of Majestic Iron Ltd., continued to occupy the quarter of company for 9 months after superannuation, company decided to forfeit the amount of gratuity of Anurag. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

[July 2023, 5 Marks]

Answer:

Ans. As per Section 4(6) of Payment of Gratuity Act, 1972,

- The gratuity of any employee whose services have been act, wilful terminated for any omission or the negligence causing damage or loss or destruction to property belonging to the employer shall be forfeited to the extent of the damage or loss so caused.
- The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for:
 - His riotous or disorderly behaviour or any other act of violence on his part.
 - Any act which constitutes an offence involving moral turpitude provided such act must be committed in course of his employment.
 - The amount can be forfeited only up to the extent of gratuity.
 - Only in above cases the gratuity can be forfeited & none others.
 - The refusal by the employees to surrender land belonging to the employer is not a ground for forfeiture of gratuity.

In given case, it is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Ajit is entitled to receive the balance gratuity.

QUESTION BANK



CA AKASH AGARWAL

POGA, 1972



[PP. June 2024]

[7 Marks]

Q7. Discuss in detail about application and belated application for payment of gratuity.

Answer:

- As per Rule 7(1) an employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form 'T' to the employer.
 - Where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.
 - as per Rule 7(2) a nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within thirty days from the date of gratuity became payable to him, in Form 'T' to the employer.
 - an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.
 - As per Rule 7(3) a legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him, in Form 'K' the employer.
 - As per Rule 7(4) where gratuity becomes payable under the Act before the Commencement of these rules, the periods of limitation specified in sub-rules (1), 2) and (3) shall be deemed to be operative from the date of such commencement.
 - As per Rule 7(6) an application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.
- Related application**
- As per Rule 7(5) an application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

[PP. June 2024]

[7 Marks]

Q8. Analyze the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity under Gratuity Act 1972.

Answer:

- Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for

hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-

- that he has used due diligence to enforce the execution of this Act, and
 - that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;
- In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor.
 - If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

[PP. DEC 2024]

[7 Marks]

Q9. Describe the regulations relating to the payment of gratuity and explain how the gratuity amount is calculated.

Answer:

- Provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five (5) years, -
 - On his superannuation, or
 - On his retirement; or
 - Resignation, or
 - On his death or disablement due to accident or disease
- The completion of continuous service of five (5) years shall not be necessary where the termination of the employment of any employee is due to death or disablement. In the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to the heirs.

Calculation of Gratuity

- For every completed year of service or part thereof in excess of six (6) months, the employer shall pay gratuity to an employee at the rate of fifteen (15) days wages based on the rate of wages last drawn by the employee concerned.
- In the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his

QUESTION BANK

CA AKASH AGARWAL

DOGA, 1972

employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

- In the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.
- Establishment other than Seasonal Establishment
- $15/26 \times \text{Drawn Salary} \times \text{No. of completed years of service or part thereof in excess of 6 months}$
- Seasonal Establishment
- Those who work throughout the year: 15/26 Computation Rule as above.
- Those who work only during the season: 7 days gratuity for each season
- The amount of gratuity payable to an employee shall not exceed twenty months' wages. The maximum gratuity payable is ₹ 20 lakhs.

EXTRA THEORY QUESTIONS

Q10. Define 'continuous service'. Elucidate the requirement of minimum no of days for continuous service in respect of regular employment and seasonal employment.

Ans: Section 2A deals with the continuous service. According to this section-

1. an employee shall be said to be in 'continuous service' for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of sickness, accident leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay off, strike or a lock out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act;
2. where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of 1 year or 6 months, he shall be deemed to be in continuous service under the employer:
 - a) for the said period of one year, if the employee during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - i) 190 days in the case of an employee employed below the ground in mine or in an establishment which works for less than 6 days a week; and
 - ii) 240 days in any other case;
 - b) for the period of 6 months, if the employee during the period of 6 calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than-
 - i) 95 days, in the case of an employee below the ground in a mine or in an establishment which works for less than 6 days in a week; and
 - ii) 120 days in any other case.

The explanation to this section provide that for the purpose of clause (2), the number of days on which the employee has actually worked under an employer shall include the days on which-

- ⊙ he has been laid off under an agreement or as permitted by the standing orders made under the Industrial Establishment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
- ⊙ he has been on leave with full wages, earned in the previous year;
- ⊙ he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- ⊙ in the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed 26 weeks.

Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75%, of the number of days on which the establishment was in operation during such period.

Q11. Write note on applicability of Gratuity Act on establishments

Answer: The Act applies to -

- (a) Every Factory, Mine, Oilfield, Plantation, Port and Railway Company,
- (b) Every shop or Establishment within the meaning of any law for the time being in force in relation to Shops and Establishments in a State, in which 10 or more persons are employed or were employed, on any day of the preceding 12 months,
- (c) Such other Establishments or class of Establishments in which 10 or more Employees are employed, or were employed, on any day of the preceding 12 months, as specified by Central Government Notification.
- (d) A Shop or Establishment to which this Act has become applicable shall continue, to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below 10.

Q12. Write about employers' responsibility about serving the notice for payment of gratuity. Also state the mode of service of notice.

Answer:

- (1) Within fifteen days of the receipt of an application under 7 for payment of gratuity, the employer shall
 - (i) if the claim is found admissible on verification, issue a notice in Form 'T' to the applicant employee, nominee or legal heirs as the case may be, specifying the reasons the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or
 - (ii) if the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heirs as the case may be, specifying the reasons why the claim for

QUESTION BANK



CA AKASH AGARWAL

POGA, 1972



gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

(2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form 'L' under clause (1) of sub-rule (1) shall be re fixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.

(3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that case, the time limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the is furnished to the employer.

(4) A notice in Form 'L' or Form M shall be served on the applicant either by personal service E after taking receipt or by registered post with acknowledgement due.

(5) A notice under sub-section (2) of section 7 shall in Form 'L'.

Q13. What is the remedy available to a person aggrieved by an order of the controlling authority?

Answer:

- A person aggrieved an order of the controlling authority may within 60 days from the date of receipt of order prefer and appeal to appropriate government /other specified authority. The Appellate Authority may extend time period of appeal Aa another period of 60 days.
- The employer's appeal shall not be admitted without producing the certificate of gratuity amount issued by the controlling authority the deposit of the said amount with the appellate authority.
- The appellate authority may, after giving reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

Q14. Write short on approved gratuity fund.

Answer:

- The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of Compulsory Insurance according to section 4A.
- The Gratuity Act further states the manner in which the gratuity liability of an organisation should be provided for.
- Under section 4A of the Gratuity Act, the following methods have been prescribed:
 - (a) Obtain a Gratuity Insurance from Life Insurance Corporation of India
 - (b) Establish an Approved Gratuity Fund and contribute periodically

- Section 4A has only been notified in the State of Andhra Pradesh and remains unnotified for rest of India. It is, therefore, clarified that an organisation may opt for neither purchasing a Gratuity Insurance nor establishing an Approved Gratuity Fund. It may simply create Gratuity in its books of accounts. However, it does not affect the employer's liability to pay Gratuity when it becomes payable.

Q15. What are the powers of the Controlling Authority U deciding an application for payment of gratuity?

Answer:

For the purpose of conducting an inquiry the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

- enforcing the attendance of any person or examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavits;
- Issuing commission for the examination of witness

Q16. Discuss the penal provisions under this Act.

Answer:

1. **False statement to avoid payment**-Whoever for the purpose of avoiding any payment to be made himself under this Act or enabling any other person to avoid such made any false statement or payment, knowingly makes or causes to false representation shall be punishable with imprisonment for e term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
2. **Non compliance of provisions**-Employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule or order made there under shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend 01 one thousand rupees, or with both.
3. **Non payment of Gratuity**-Where the offence relates to non-payment JO any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than three months unless court trying the offence, for reasons to be recorded by it in writing is of opinion that a lesser term of imprisonment or the imprisonment of a fine would meet the ends of justice.

QUESTION BANK



CA AKASH AGARWAL

DOGA, 1972



CASE STUDIES

Q17. Mr. Gill, an employee of M/s Sonabheel Tea Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Mr. Gill. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

Answer: The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee may be wholly or partially forfeited:

- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or
- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Mr. Gill is entitled to receive the balance gratuity.

Q18. Deepak is employed in Assam Coffee Estate Ltd., a seasonal establishment. The factory was in operation for four months only during the financial year 2018-19. Deepak was not in continuous service during this period. However, he has worked only 60 days. Referring to the provisions of The Payment of Gratuity Act, 1972, decide whether Deepak is entitled to gratuity payable under the Act. Would your answer be the same in case Deepak works for 100 days?

Ans: For entitlement of gratuity one must work for at least 75% of the days on which the establishment was open and in operation. The factory was in operation for 120 days.

One must work for 75% of 120 i.e. 90 days to claim gratuity. Deepak is not entitled to gratuity, since he has actually worked for less than 75% of the number of days on which the establishment was in operation during such period.

If Deepak had worked for 100 days, then he would have been entitled to gratuity since the number of days on which he would have worked, in that case, would have been 75% or more of the number of days on which the establishment was in operation.

Q19. Mr. Alexander was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. Alexander applied to the Appropriate Authority for the recovery of the amount of gratuity. Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Ans:

- Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act, 1972.
- Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.
- The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].
- If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).
- Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).
- In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. Alexander is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. Alexander. On the refusal by the company, Mr. Alexander can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

Q20. Mr. Green, an employee of Yellow Ltd. becomes disabled due to a disease and is unable to do the same work. He was then re-employed on the reduced wage. How the gratuity of Mr. Green shall be, computed under the provisions of the Payment of Gratuity Act, 1972?

Ans:

- Computation of Gratuity of a disabled employee: According to Section 4(4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts:

QUESTION BANK



CA AKASH AGARWAL

POGA, 1972



- For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement.
- For the period subsequent to the disablement: On the basis of the reduced wages as drawn by him at the time of the termination of services.
- In the case of Bharat Commerce and Industries Vs. Ram Prasad, it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit.
- As per section 4(3), the maximum amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

[PP DEC. 2021]

[12 MARKS]

Q.21. M/s TNT Pvt. Ltd. incorporated on 02-03-2009 carrying on business from the date of incorporation employing 70 persons. It's one of the renowned companies in the country. There had been certain turn of events recently and the company has started to face challenges since mid of the year of 2020 due to COVID-19 pandemic. Like most parts of the world this company was also badly hit by this pandemic. A larger number of companies in India were affected directly or indirectly by this pandemic and complete lockdown. Due to this pandemic and losses, the number of employees reduced to 7 with effect from 15-07-2020 by M/s. TNT Pvt. Ltd.

- Mr. Jain who retired on 30-12-2020 was refused gratuity on the ground that the total number of employees is below 10.
- Another senior employee of the company Mr. T.K. Singhania retired on 31-12-2020. Mr. Singhania, continued to occupy the quarter of the company for 8 months after superannuation and as a result the company decided to forfeit the amount of gratuity of Mr. Singhania.
- Mr. Arun Bharat an employee of the company who was frustrated with his work and wilfully caused damage of machine. M/s TNT Pvt Ltd. had to spend 95000 to get the machine in working condition and due to these damages. M/s TNT Pvt. Ltd. withheld the gratuity of Mr. Arun Bharat.
- M/s TNT Pvt. Ltd. has a separate factory which is a seasonal establishment. Mr. Barun Bharat brother of Mr. Arun Bharat is employed in this factory. The factory was in operation for 4 months only during the financial year: 2020-21 due to Covid-19 pandemic. Mr. Barun Bharat was not in continuous service during this period and he has worked only 60 days:
 - i) Examine the validity of decision taken by M/s TNT Pvt. Ltd. To forfeit the amount of gratuity of Mr. Singhania in the light of the Payment of Gratuity Act, 1972.
 - ii) Examine the validity of decision taken by Ms TNT Pvt. Ltd. to withhold the amount of gratuity of Mr. Arun Bharat in the light of the Payment of Gratuity Act, 1972.
 - iii) Decide whether Mr. Barun Bharat is entitled to claim gratuity under the provisions of the Payment of Gratuity Act, 1972.

- iv) Examine the validity of decision taken by M/s TNT Pvt. Ltd. For Mr. Jain to refuse to pay the gratuity since the number of employees reduced to 7 w.e.f. 15-07-2019 as per provisions of the Payment of Gratuity Act, 1972.

Ans. An employee shall receive gratuity on completion of 5 continuous years of service.

As per Section 4(6) of Payment of Gratuity Act, 1972:

- The gratuity of any employee whose services have been terminated for any act, wilful omission, or negligence causing damage or loss or destruction to the property belonging to the employer shall be forfeited to the extent of damage or loss so caused.
 - The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for:
 - His riotous or disorderly behaviour or any other act of violence on his part.
 - Any act which constitutes an offence involving moral turpitude provided such act must be committed in course of his employment.
 - The amount can be forfeited only up to the extent of gratuity.
 - Only in above cases the gratuity can be forfeited & none others.
 - The refusal by the employees to surrender land belonging to the employer is not a ground for forfeiture of gratuity.
- i) In given case, it is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Mr. Singhania is entitled to receive the gratuity.
 - ii) In given case, it is valid for the company to forfeit the gratuity up to the amount of damage.
 - iii) As per Section 2A of the Payment of Gratuity Act, 1972, where an employee employed in seasonal establishment is not in continuous service for any period of 1 year or 6 months, he shall be deemed to be in continuous service for such period if he has actually worked for at least 75% of number of days on which establishment was in operation during such period.

As per 2nd Proviso to Section 4(2) of Payment of Gratuity Act, 1972, in case of an employee who is employed in a seasonal establishment and who was not so employed throughout the year, the employer shall pay the gratuity @ of 7 days wages for each season.

Amount of gratuity = $\frac{7}{26} \times \text{last drawn wages} \times \text{completed year of service}$.

In given case, Mr. Barun Bharat has actually worked for less than 75% of the number of days on which the establishment was in operation during such period. So, he is not entitled to gratuity.

- iv) As per Section 1 of Payment of Gratuity Act, 1972, this Act applies to shop or establishment in which at-least 10 persons are employed, or were employed, on any day of preceding 12 months.

QUESTION BANK



CA AKASH AGARWAL

DOGA, 1972



As per Section 1(3A) of Payment of Gratuity Act, 1972, shop or establishment to which this Act has become applicable shall continue to be governed by this Act in spite of persons employed therein at any time it has become so applicable falls below 10.

In given case, in spite of the fact the number of employees has reduced to 7, still the Act will continue to be applicable on the establishment.

Hence, M/s TNT Pvt. Ltd. cannot refuse payment to gratuity to Mr. Jain.

[PP June 2017]

[5 Marks]

Q.22. E was an employee of TE Ltd. The whole of the undertaking of TE Ltd. was taken over by a new company, ATE Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company. Examine the validity of the refusal of the directors in the light of the provisions of the Payment of Gratuity Act, 1972.

Ans. As per Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The condition of the completion of 5 years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section. Disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

In given case, E is entitled to recover gratuity after becoming permanently disabled and continuous service of 5 years is not required in this case.

Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

[PP Dec. 2015]

[3 Marks]

Q.23. X is employed in ABC Ltd., a seasonal establishment. The factory was in operation for 4 months during the financial year 2010-11. X was not in continuous service during this period. However, he has worked for sixty days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether is entitled to gratuity payable under the Act. Would your answer be the same in case X works for 100 days?

Ans. As per Section 2A of Payment of Gratuity Act, 1972, where an employee is employed in a seasonal establishment and is not in continuous service for any period of 1 year or 6 months, there such an employee shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75% of the number of days on which the establishment was in operation during such period.

In given case, X has worked only for 60 days which are less than 90 days (75% of 4 months), so X shall not be eligible for getting any gratuity in first case.

In the second case, since X has worked for 100 days that is more than 75% of number of days therefore, he is entitled for gratuity.

[PP June 2015]

[2 Marks]

Q.24. Mr Arun after working for 25 years 6 months and 10 days superannuated on 31-01-2015, when his salary was ₹70,000/ per month, calculate the amount of Gratuity.

Ans. He superannuated on 31-01-2015. He gave continuous service of 25 years 6 months and 10 days which will in total amount for 26 years.

Amount of gratuity = $15/26 \times \text{last drawn wages} \times \text{completed year of service}$

$$= 15/26 \times 70000 \times 26$$

$$= ₹105000$$

Maximum ceiling being ₹20,00,000; he is entitled to ₹10,50,000

Q.25. Ram is employed in Sweet Sugar factory, a seasonal establishment. The factory was in operation for 4 months only during the financial year 2011-12. Ram was not in continuous service during this period. However, he has worked only 60 days. Referring to the provisions of The Payment of Gratuity Act, 1972, decide whether Ram is entitled to gratuity payable under the Act. Would your answer be the same in case Ram works for 100 days?

[June 2014, 2 Marks]

Or

QUESTION BANK



CA AKASH AGARWAL

POGA, 1972



Explain the manner in which the gratuity payable to employees in seasonal establishments is calculated under the Payment of Gratuity Act, 1972. State also the maximum amount of gratuity payable under the Act.

[Dec. 2016, 5 Marks]

Or

A is employed in XYZ Ltd., which is a seasonal establishment. The factory was in operation for 5 months during the financial year of 2016-17. A was not in continuous service during this period. However, he was worked for 60 days only. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether A is entitled to gratuity payable under the Act. 1972. Would your answer be the same in case A works for 100 days?

[Dec. 2017, 4 Marks]

Or

Deepak is employed in Assam Coffee Estate Ltd., a seasonal establishment. The factory was in operation for 4 months only during the financial year 2018-19. Deepak was not in continuous service during this period. However, he has worked only 60 days. Referring to the provisions of The Payment of Gratuity Act, 1972, decide whether Deepak is entitled to gratuity payable under the Act. Would your answer be the same in case Deepak works for 100 days.

[June 2019, 5 Marks]

Ans. An employee shall receive gratuity on completion of 5 continuous years of service. As per Section 2A of the Payment of Gratuity Act, 1972, where an employee employed in seasonal establishment is not in continuous service for any period of 1 year or 6 months, he shall be deemed to be in continuous service for such period if he has actually worked for at least 75% of number of days on which establishment was in operation during such period. As per 2nd Provision to Section 4(2) of Payment of Gratuity Act, 1972, in case of an employee who is employed in a seasonal establishment and who was not so employed throughout the year, the employer shall pay the gratuity @ of 7 days wages for each season. Amount of gratuity = $7/26 \times \text{last drawn wages} \times \text{completed year of service}$ In given case, Ram has actually worked for less than 75% of the number of days on which the establishment was in operation during such period. So, Ram is not entitled to gratuity. Same goes for Deepak, he must work for 75% of 120 i.e. 90 days to claim gratuity. Deepak is not entitled to gratuity, since he has actually worked for less than 75% of the number of days on which the establishment was in operation during such period. If Ram/Deepak had worked for 100 days, then he would have been entitled to gratuity since the number of days on which he would have worked, in that case, would have been 75% or more of the number of days on which the establishment was in operation. The maximum amount of gratuity payable is ₹20 lakhs.

[PP Dec. 2013]

[3 Marks]

Q.26. Mr. Mahavir joined the company on 25-05-1987 and retired on 30-11-2012 when his salary was ₹70000 per month. He also received conveyance allowance ₹20000 per month and average overtime ₹1000 per month, calculate the amount of the gratuity.

Ans. He joined on 25-05-1987 & retired on 30-11-2012. He of 25 gave continuous service years 6 months which will in total amount for 26 years.

Amount of gratuity = $15/26 \times \text{last drawn wages} \times \text{completed year of service}$
= $15/26 \times 70000 \times 26$
= ₹1050000

Conveyance allowance & overtime wages are not part of wages.

Maximum ceiling being ₹20,00,000; he is entitled to ₹10,50,000

[PP Dec. 2013]

[3 Marks]

Q.27. Anurag was an employee of Coffee Estate Ltd. The whole undertaking of Coffee Estate Ltd. was taken over by a new company Asian Coffee Ltd. The Service of Anurag remained continuous in the new company. After serving for one year, Anurag met with an accident and become permanently disable. Anurag applied to the new company for the payment of gratuity. The company Asian Estate Ltd. refused to pay gratuity on the ground that Anurag has served only for a year in the company. Examine the validity of refusal of the company in the light of the provisions of the Payment of Gratuity Act, 1972.

Ans. As per Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- On his superannuation, or,
- On his retirement or resignation, or
- On his death or disablement due to accident or disease.

The condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section.

Disablement means such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

Moreover, if an employee transfers from one company to another, the amount of gratuity shall also get transferred to new company. In given case, as per above provisions, Anurag is entitled to recover gratuity after becoming permanently disabled, and continuous service of five years is not required in this case.

QUESTION BANK



CA AKASH AGARWAL

POGA, 1972



Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

[PP JUNE 2013]

[3 Marks]

Q.26. ABC Pvt. Ltd. incorporated on 02-01-1980 carrying on business from the date of incorporation employing 50 persons. Due to loss, the number of employees reduced to 5 with effect from 02-06-2011. Mr. A retired on 31-05-2013, he was refused gratuity on the ground that the total number of employees is below 10. Whether employer was justified?

Ans. As per Section 1 of Payment of Gratuity Act, 1972, this Act applies to shop or establishment in which at-least 10 persons are employed, or were employed, on any day of preceding 12 months.

As per Section 1(3A) of Payment of Gratuity Act, 1972, shop or establishment to which this Act has become applicable shall continue to be governed by this Act in spite of persons employed therein at any time it has become so applicable falls below ten.

In given case, in spite of the fact the number of employees has reduced to 5, still the Act will continue to be applicable on the establishment.

Hence ABC Pvt. Ltd. cannot refuse payment of gratuity to Mr. A.

OBJECTIVES

Q1. Multiple Choice Question

- Which does not amount to retirement?
 - Retrenchment
 - Resignation
 - Dismissal
 - Superannuation
- Gratuity is payable to an employee
 - On his superannuation
 - Retirement
 - Retrenchment
 - In all the above cases
- The gratuity is payable to an employee shall not exceed
 - 12 months' pay
 - 16 months' pay
 - 20 months' pay
 - 24 months' pay
- The employer shall display an abstract of the Act and the Rules in Form No
 - U
 - H
 - O
 - N
- If sufficient cause is shown the appropriate Government may condone the delay in filing appeal against the order of the Controlling Authority, for
 - 30 days
 - 60 days
 - 90 days
 - No time limit
- Nomination is to be made by an employee
 - Immediately on his appointment
 - After completion of one year service
 - After he is made permanent
 - None of the above
- Which one of the following is to be included in the definition of 'wage'?
 - Dearness allowance

QUESTION BANK



CA AKASH AGARWAL

POGA, 1972



- (b) Overtime allowance
(c) Commission
(d) House rent allowance
8. If an employer intends to close the business, he is to send notice to the Controlling Authority within ____ before the intended closure.
(a) 10 days
(b) 30 days
(c) 60 days
(d) 90 days
9. Nomination is to be filed in ____
(a) Single form
(b) Duplicate
(c) Triplicate
(d) Quadruplicate
10. Which will not amount to service of notice under the rule?
(a) Personal service
(b) By registered post
(c) By courier
(d) None of the above
11. Gratuity is payable to an employee after he has rendered continuous service for not less than five years on his:
(a) Transfer
(b) Daughter's marriage
(c) Re-employment
(d) Resignation
12. Who will not be considered as an employee?
(a) Canteen workers
(b) Casual workers
(c) Partners
(d) Part time employee
13. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than:
(a) 3 years
(b) 5 years
(c) 7 years
(d) 10 years
14. Gratuity is calculated on the basis of the continuous service rendered by the employee, for every completed year of service or part in excess of:
(a) 3 months
(b) 6 months
(c) 9 months
(d) 11 months
15. The right of receiving the gratuity by the employee is the
(a) Social right
(b) Conventional right
(c) Statutory right
(d) Moral right
16. If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the:
(a) State Board
(b) Controlling authorities
(c) State or Central Board
(d) All of the above
- Q2. True or False**
1. A person holding a post under the Central Government is an employee under the Payment of Gratuity act.
 2. The father-in-law of a female employee will come under the term family'.
 3. The maternity leave granted for 90 days will be service, included for the calculation of continuous.
 4. An employee is not required to obtain An employee may give insurance for liability for payment of gratuity
 5. An employee may give insurance for liability for payment of gratuity, to receive gratuity after his marriage
 6. No gratuity payable shall be liable to attachment in execution of any decree of court.
 7. The Controlling Authority may pay the gratuity to a minor, a nominee to receive the gratuity after the death of an employee.
 8. For the purpose of calculation of gratuity 26 days are taken as a month.
 9. The employer can make agreement with the employer to pay gratuity below the amount fixed by the Act.

QUESTION BANK

CA AKASH AGARWAL

POGA, 1972

10. Gratuity is a lump sum payable on consideration of the past services rendered by the employee.
11. Whether Gratuity under Payment of Gratuity Act, 1972 is payable for the period of layoff under the Industrial Disputes Act 1947.
12. The maximum ceiling of gratuity amount is ₹3,50,000.
13. Ashim calculated gratuity taking $15/30 \times \text{No. of year of service}$.
14. Payment of Gratuity Act, 1972 applies to every shop and establishment employing seven or more persons.
15. Gratuity shall be payable to an employee on his disablement due to disease after he has rendered 7 years of continuous service.
16. Payment of gratuity is the newly adopted retiral social security benefit.

Q3. Fill in the Blanks:

1. The gratuity is payable to an employee after he has rendered continuous service for not less than ____ years.
2. The maximum amount of gratuity payable is ____
3. The employer shall arrange to pay gratuity within ____ from the date of it becoming payable to the eligible person.
4. Appeal, against the order of the Controlling Authority may be filed within ____ days from the date of receipt of the order.
5. If the gratuity is not paid in time the employer is liable to pay interest at ____ per annum
6. Nomination is to be made by an employee in Form ____
7. Gratuity is calculated for every completed year of service or part in excess of six months at the rate of ____ wages last drawn
8. Section 4A may exempt the employer employing ____ or more persons who establishes an approved gratuity fund.
9. An employee, within ____ of acquiring a family shall submit a fresh nomination.
10. If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the ____
11. If gratuity is not paid within 30 days from the date it becomes payable simple interest @ ____ p.a. is payable on the expiry of the said period.

ANSWERS

MCQ	TRUE or FALSE	FILL UPS
1. D	1. False	1. 5
2. D	2. True	2. Rs. 20 Lakhs
3. C	3. True	3. 30 days
4. A	4. False	4. 60 days
5. B	5. False	5. 10%
6. B	6. True	6. F
7. A	7. False	7. 15 days
8. C	8. True	8. 500
9. B	9. False	9. 90 days
10. C	10. True	10. Controlling Authority
11. D	11. True	11. 12%
12. C	12. False	
13. B	13. False	
14. B	14. False	
15. B	15. False	
16. B	16. False	

QUESTION BANK



CA AKASH AGARWAL

EPF, 1952



3. EPF, 1952

EMPLOYEE PROVIDENT FUND AND MISCELLANEOUS ACT, 1952

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. Dec. 2016, MTP. June 2018]

[5 Marks]

Q1. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is not applicable to certain establishments. List out those establishments.

Answer:

As per Section 16(1) of The Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Act is not applicable to following:

- Any establishment registered Under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any state relating to co-operative societies employing less than 50 persons and working Without the aid of power or
- To any establishment belonging to or under the Control of the CG or a State Government and whose employees are entitled to the benefit of Contributory Provident Fund or old age pension or
- Any other establishment set up under any Central Provincial or State Act and whose employees are entitled to any Contributory provident fund or old age pension.

[PP. July. 2023]

[7 Marks]

Q2. Enumerate the determination of moneys due from employers' under Employees Provident Fund & Miscellaneous Act, 1952.

Answer:

- As per Section 7A of EPF & Misc. Act, 1952 in case where a dispute arises regarding the applicability of this Act to an establishment, the Authority concerned may conduct such enquiry as he may deem necessary decide such dispute and determine the amount due from any employer under the provision of this Act, the scheme or the Pension Scheme or the Insurance

Scheme as the case may be. Before passing such order the employer concerned shall be given a reasonable opportunity of representing his case.

- For the purpose of conducting inquiry the Authority shall have the same powers as are vested in a court under CPC for trying a suit.
- Where the employer, employee or any other person required to attend the inquiry, fails to attend such inquiry, the Authority shall decide the case ex-parte and pass orders based on the available documents put forth before him.
- The employer, within 3 months from the date of communication of such order, may apply to the Authority to set aside the ex-parte order showing that there are sufficient causes for not enabling him to attend the hearing on the prescribed date.
- If the Authority is satisfied, he may set aside the ex-parte order and shall appoint a date for proceeding with the inquiry.
- The applicability of the Act to any class of employees is not determined and decided by any proceeding under section 7A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under section 7A of the Act is only determination of quantification of the same.

[MTP. June 2019]

[7 Marks]

Q3. Under what circumstances advances and withdrawal made from the PF fund

Answer:

Withdrawal from the fund is allowed for the following purposes-

- For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
- For repayment of loans in special cases;
- Withdrawal within one year before the retirement;
- Withdrawal upto 75% of the balance, if not employed from one month or more, subject to approval of P.F. Commissioner or any officer authorized by him. Such withdrawals are not required to be repaid.

Advances from the fund

Advances from the fund are paid for the following purposes-

- For illness in certain cases;
- For marriages or post matriculation education of children;
- In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non-refundable)
- Granted to members affected by cut in the supply of electricity: (non-refundable)
- Grant of advance to members who are physically handicapped: (non-refundable)

QUESTION BANK



CA AKASH AGARWAL

EPF, 1952



[MQP, Dec 2024]

[7 Marks]

Q4. Discuss the penalties under section 14 of the Employees Provident Fund and Miscellaneous Provision act 1952?

Answer:

- Section 14(1) provides that for the purpose of avoiding any payment whoever knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of ₹5,000 or with both.
- Section 14(1A) provides that an employer, who contravenes or makes default in complying with the provisions of Section 6 or as it relates to the payment of inspection charges, administrative charges shall be punishable with imprisonment for a term which may extend to three years but-
 - Which shall not be less than one year and fine of ₹10,000 in case of default of payment of the employees' contribution;
 - Which shall not be less than six months and a fine of ₹5,000 in any other case.
- Section 14(1B) provides that an employer who contravenes or makes default in complying with the provisions of Section 6C in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than six months and shall also be liable to fine which may extend to ₹5,000.
- Section 14(2) provides that subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance scheme may provide that any person who contravenes or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ₹4,000 or with both.
- Section 14(2A) provides that whoever, contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted shall, if no other penalty is elsewhere provided by or under this Act for such contravention or noncompliance, be punishable with imprisonment which may extend to six months but which shall not be less than one month and shall be liable to fine which may extend to ₹5,000.

EXTRA QUESTIONS

Q5. What are the schemes available in the EPF Act?

Answer:

- The following three schemes have been framed under the Act by the Central Government:

a) **The Employees' Provident Fund Schemes, 1952;**

- Section 5 provides that the Central Government framed a scheme called the Employees' Provident Fund Scheme ('Scheme' for short) for the establishment of provident funds for employees. The Central Government framed 'The Employees' Provident Fund Scheme, 1952' which came into effect from 2nd September, 1952. The fund shall vest in and be administered by the Central Board constituted under Section 5A of the Act. The scheme framed may provide for all or any of the matters specified in Schedule II. The scheme may provide that any of the provisions shall take effect either prospectively or retrospectively on such date as may be specified in the scheme.

b) **The Employees' Pension Scheme, 1995; and**

The Central Government framed Employees' Pension Scheme for the purpose of providing for-

- Superannuation pension;
- Retiring pension or permanent total disablement pension to the employees of any establishment or class of
- establishments to which this Act applies; and
- Widow or widower's pension;
- Children pension or orphan pension payable to the beneficiaries of such employees.

The Pension Scheme may provide for all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that scheme

c) **The Employees' Deposit-Linked Insurance Scheme; 1976**

The Central Government made the Employees' Deposit Linked Insurance Scheme, 1976 which came into effect from 01.09.1976. It applies to all factories and other establishments to which the Act applies except tea factories in State of Assam. The wage ceiling limit under Employees Deposit linked Insurance Scheme has been increased from 6,500 to 15,000. The insurance benefit under the scheme shall be an amount between 2.5 lakhs and 6 lakhs.

QUESTION BANK



CA AKASH AGARWAL

EPF, 1952



Q6. Narrate the features of Employees' Pension Scheme.

Answer:

- The Scheme called the Employees' Pension Scheme is to provide for, —
 - (a) Superannuation pension,
 - (b) Retiring pension,
 - (c) Permanent total disablement pension,
 - (d) Widow or widower's pension, (e) Children pension, (f) Orphan pension.
- **Contribution**
 - (a) Such sums from the employer's contribution under Section 6, not exceeding 8.33 % of the salary of the concerned employees, as may be specified in the Pension Scheme;
 - (b) The CG shall also contribute at the rate of 1.16 % of the salary of the Employee's Pension Scheme and credit the contribution to the Employees' Pension Fund

Q7. Short notes on –

- (a) Appropriate Government
- (b) Employee
- (c) EPF Appellate Tribunal

Answer:

- (a) **Appropriate Government:** Section 2(a) defines the term 'appropriate Government'
 - in relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with-
 - a railway company;
 - a major port;
 - a mine or an oil field; or
 - a controlled industry; or
 - in relation to an establishment having departments or branches in more than one State, the appropriate Government is the 'Central Government';
 - in relation to any other establishment, the appropriate Government is the 'State Government'

(b) Employee

- Section 2(f) defines the term 'employee' as any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person-
- employed by or through a contractor in or in connection with the work of the establishment;
 - engaged as an apprentice, not being an apprentice
 - engaged under the Apprentices Act, 1961 or under the Standing orders of the establishment.

In 'Prakash D. Shah V. Union of India'- 2004 LLR 218 (Bom) the High Court held that a partner of a firm having a status of beneficiary will not be employee either to be covered or counted under the Act.

(c) EPF Appellate Tribunal

Section 7D provides for the appointment of EPF Appellate Tribunal to hear the appeal against the order passed by the Central Government or any authority under Section 7A or 7B or 7C. The Appellate Tribunal may, after giving reasonable opportunities to the parties decided the appeal either confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit. The Tribunal may rectify any mistake apparent from the record within five years from the date of its appeal order. No appeal by the employer shall be entertained unless he has deposited with it 75% of the amount due from him. The Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

Q8. What are the consequences if an employer makes default in the payment of any contribution to the Fund?

Answer:

- Section 14(1) provides that for the purpose of avoiding any payment whoever knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of 5,000 or with both.
- Section 14(1A) provides that an employer, who contravenes or makes default in complying with the provisions of Section 6 as it relates to the payment of inspection charges, administrative charges shall be punishable with imprisonment for a term which may extend to three years but-
 - Which shall not be less than one year and fine of 10,000 in case of default of payment of the employees' contribution;
 - Which shall not be less than six months and a fine of 5,000 in any other case.
- Section 14(1B) provides that an employer who contravenes or makes default in complying with the provisions of Section 6C in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than six months and shall also be liable to fine which may extend to 5,000.
- Section 14(2) provides that subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance scheme may provide that any person who contravenes or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to 4,000 or with both.

QUESTION BANK



CA AKASH AGARWAL

EPF, 1952



Q9. Explain the salient features relating to the Employees Deposit linked Insurance Scheme.

Answer:

- The Central Government made Employees' Deposit Linked Insurance which came into effect from 01.09.1976.
- It applies to all factories and other establishments to which the Act applies except tea factories in State Assam.
- The wage ceiling limit under Employees Deposit linked Insurance Scheme has been increased from Rs. 6,500 to 15,000.
- The insurance benefit under scheme shall be an amount between 2.5 lakhs and 6 lakhs.

Contribution

- The Deposit Linked Insurance Fund has been created for this purpose.
- In this Fund, the employer shall pay such amount not being more than 1% of the aggregate of basic wages, dearness allowance and retaining allowance of every such employee in relation to whom he is the employer.
- The employer shall pay into the Insurance Fund such further amount of money not exceeding one fourth of the contribution which is required to make as Government may from time to time determine to meet all the expenses in connection with the administration of the scheme other than the expenses towards the cost of any benefits provided or under that scheme.
- Where the monthly pay of an employee exceeds Rs. 15,000 the contribution payable is restricted to the amounts payable on a monthly pay of Rs. 15,000 dearness allowance, retaining allowance and cash value of food concession.

Q10. Discuss provisions as to review of orders passed u/s 7A of the EPF Act.

Answer:

- Section 7B provides that an order under Section 7A may apply for a person aggrieved by a review of that order to the Officer who passed the order, if he
 - discovered new and important matter of evidence which after the exercise of due diligence was not within his knowledge; or
 - could not produced by him at the time when the order was made;
 - on account of some mistake; or error apparent on the face of the record; or
 - for any other sufficient reason.
 Such officer may also on his own motion review his order if he is satisfied that it is necessary so to do any such ground.
- Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application. Where the officer is of opinion that the application for review should be granted, he shall grant the same.
- In 'Balu Fire Clay Mines V. Union of India' it was held that review is a statutory remedy. A review petitioner should also be disposed of by a speaking order.

CASE STUDIES

[PP DEC 2015]

[3 Marks]

Q11. After serving 15 years, Mr. Anand died on 30-09-2015 when his last 12 months average monthly wages was 5,000. Calculate the amount of Employees Linked Deposit Insurance (ELDI) which can be paid to nominee of Anand.

Answer:

As per current amendment to The Employees Deposit Linked Insurance Scheme, 1976, the pay-out to be awarded shall be calculated as under: Average monthly wages drawn (up to Rs. 15,000) during the 12 months preceding the month of death * by 30 + Bonus amount of Rs. 2.5 lakhs. Maximum amount payable is Rs. 7,00,000

- So, in given case Mr. Anand's nominee shall get, $(5000 \times 30) + 250000 = 400000$ rupees.

[PP June 2017]

[6 Marks]

Q12. An employee working in an establishment covered by the E.P.E. and M.P. Act, 1952, leaves his employment and takes up employment in another establishment. State in this connection: A. How shall the amount accumulated to his P.F. account be transferred? B. What steps shall be taken if the establishment in which he has joined is not covered by the Act? C. What would be your answer if the establishment in which he was previously working is not covered by the Act?

Answer:

- As per Section 17A of EPF & MP Act, 1952, the transfer of accounts of an employee in case of his leaving the employment and taking up employment in another establishment and to deal with the case of an establishment to which the Act applies and also to which it does not apply.
- Where an employee of an establishment to which the Act applies leaves his employment and obtains re-employment in another establishment to which the Act does not apply, the amount of accumulations to the credit of such employee in establishment left by him shall be transferred, within such time as may be specified by the CG in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.
- When an employee of an establishment to which the Act does not apply leaves his employment and obtains re-employment in another establishment to which the Act applies, the amount of accumulations to the credit of such employee in the provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is employed.
- In given case, the amount of the employee shall be transferred as per above provisions.

QUESTION BANK



CA AKASH AGARWAL

EPF, 1952



Q13. Ritesh, a 57 years old district judge was appointed by the Central Government as Presiding Officer of the Employee's Provident Funds Appellate Tribunal for a period of five years. After three years, he (Ritesh) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date. Examine the validity of Ritesh's action to cease work under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer:

- Section 7F (1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides that the Presiding Officer of a Employees' Provident Funds Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
- Hence, Ritesh's action is invalid as per above provisions. He is supposed to continue for three months unless he is relieved earlier by the Central Government or his successor appointed by the Central Government has taken up the office, whichever is earlier.

Q14. Primitive Ltd., which is covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was adjudged insolvent and an order for winding up was made. State, in this connection, whether the Provident Fund is attachable and whether the payment of Provident Fund contribution be considered as priority over other Debts of the Company.

Answer:

- According to section 10 of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member or of any exempted employee in the Provident Fund shall not in any way be capable of, being assigned or charged and shall not be liable to attachments under any decrees order of any court in respect of any debt or liability, incurred by the member or the exempted employee. Neither the official assignee appointed under the Presidency town Insolvency Act, 1909 nor any Receiver appointed under the Provincial Insolvency Act 1920 shall be entitled to have any claim on any such amount. Such amount shall also not be liable to attachment under any decree or order of any court.
- Priority of Payment of Contribution over other debts (Section 11): If the employer is adjudged an insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or the employer's contribution must be included among the debts which are to be paid in priority to all other debts under Section 49 of the Presidency - Towns Insolvency Act, Section 61 of the Provincial Insolvency Act, Section 327 of the Companies Act, 2013, in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will

be a preferential payment provided the liability therefor has accrued before this order of adjudication or winding up is made

Q15. Sushil retired from the services of ABC Limited, on 31st March, 2014. He had a sum of 10 lakhs in his Provident Fund Account. It has become due for payment to Sushil on 30th April, 2014, but the company made the payment of the said amount after one year. Sushil claimed for the payment of interest on due amount at the rate of 15 per cent per annum for one year. Decide, whether the claim of Sushil is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer:

- According to Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.
- However, the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest charged by any scheduled bank. As per above provision, Sushil can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate Sushil can claim only 12 percent per annum interest on the due amount. Hence claim of Sushil for interest rate 15% is not tenable. assets of the company. In other words, this payment will be a preferential payment provided the liability therefor has accrued before this order of adjudication or winding up is made

Q16. Examine with reasons, the validity of the following nominations made under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952:

1. J nominated N (his son) as a nominee.
2. M nominated S (his wife) and K (a friend) as nominees.
3. R who does not have a family nominated A (a close relative) as a nominee.
4. G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.

Answer:

- Nomination by J in favour of N is valid, since N is a member of the family of J (since son is covered under the definition of 'family').
- Nomination by M in favour of S is valid, since S is a member of the family of M (since wife is covered under the definition of 'family'); But in favour of K is void, since K is not a member of the family of M (since K is only a friend, and a friend is not covered under the definition of 'family').

QUESTION BANK



CA AKASH AGARWAL

EPF, 1952



- Nomination by R in favour of A is valid although A is not covered under the definition of family; but if the employee does not have a family, then, nomination may be made in favour of any person.
- Nomination by G in favour of N is valid but it becomes void immediately on marriage since a nomination made in favour of a person who is not a member of the family, becomes void immediately when the employee subsequently acquires a family.

Q17. A person was declared insolvent and the Court ordered attachment of all his properties. State whether he accumulations in the Provident Fund Account of the person is attachable.

Or

Is the amount standing to the credit of a member of the Provident Fund attachable in the execution of decree or order of the Court? Examine the law, on this point, laid down in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer:

- As per Section 10 of Employees' Provident Fund & Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member of the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or any court in respect of any debt or liability incurred by the member and neither the Official assignee nor any receiver shall be entitled to, or have any claim on, any such amount.
- The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court.
- In given case, even if an order is passed by the Court, the PF account cannot be attached to any liability. This is also applicable for property of deceased person.
- Thus, the PF account of deceased insolvent person cannot be attached to any of his liability. It will go in hands of his nominee or legal representatives.

Q18. An inspector appointed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (5 hours after factory timings) and seeks to take copies of the shareholders Register. How far under the Act is his action reasonable?

Answer:

- As per Section 13(2) of Employees Provident Funds and miscellaneous Provision Act, 1952, an inspector can inspect and make copies of, take extract from any book, register or other documents maintained in relation to the establishment and where he has reason to believe that any offence under this Act has been committed by an employer seize with assistance as may think fit, such book, register or other documents or portions thereof as he may consider relevant

in respect of that offence. Such an inspection is permissible during the hours the factory is operating & not afterwards.

- In given case, the inspector had sought to take copies of the shareholder's register is wrong as he is doing it after completion of working hours of the factory. Thus, his action is not reasonable.

OBJECTIVES

Q1. Multiple Choice Question

1. Which one of the following will not include in the definition of basic wages?
 - (a) Dearness allowance
 - (b) Overtime
 - (c) Cash value for consideration
 - (d) All of the above
2. The contribution of employer to insurance fund is
 - (a) 1%
 - (b) 10%
 - (c) 12%
 - (d) None of the above
3. Contribution of 10% to PF is applicable to
 - (a) Any establishment in which less than 20 employees are employed;
 - (b) Any establishment declared as sick industrial company;
 - (c) Jute company
 - (d) All of the above
4. The minimum administrative charge payable by the employer to the fund is
 - (a) Rs. 75
 - (b) Rs. 500
 - (c) Rs. 1000
 - (d) None of the Above
5. The maximum penalty recoverable from the employer who makes the default in payment of any contribution to the fund is
 - (a) 5%
 - (b) 10%
 - (c) 15%
 - (d) 25%
6. Withdrawal from PF may be allowed for

QUESTION BANK



CA AKASH AGARWAL

EPF, 1952



- (a) Marriage of the employer
 - (b) Post matriculation education of children;
 - (c) For the purchase of a dwelling place
 - (d) For illness in certain cases
7. The Employees Pension Scheme provides for
- (a) Superannuation pension
 - (b) Orphanage pension
 - (c) Both a. and b.
 - (d) None of a. and b.
8. Contribution of the employer to employees' pension scheme is
- (a) 8.33%
 - (b) 10%
 - (c) 12%
 - (d) None of the above
9. The following cannot be nominated for the purposes of EPF Act-
- (a) Wife
 - (b) Sons of a deceased sons who have attained majority
 - (c) Father in law
 - (d) Unmarried daughter
10. While filing appeal to EPF Appellate Tribunal the employer has to deposit ____ of the amount due from him
- (a) 25%
 - (b) 50%
 - (c) 75%
 - (d) None of these
11. The Employees Provident Funds Act, 1952 is applicable to every establishment mentioned in schedule 1 and employed:
- (a) 10 persons or more
 - (b) 100 or more persons
 - (c) 20 or more persons
 - (d) 50 or more persons

12. Provisions of EPF & Miscellaneous Provision Act 1952 are applicable to Cinema/Theatre employing:

- (a) 10 or more persons.
- (b) 20 or more persons.
- (c) 5 or more persons.
- (d) 15 or more persons

13. Subject to the approval of P.F. Commissioner withdrawal from Provident fund may be allowed up to:

- (a) 25% of the balance
- (b) 50% of the balance
- (c) 75% of the balance
- (d) 100% of the balance

Q2. True or False

- 1. Once the EPF Act is covered to any establishment it shall continue to apply notwithstanding the number of persons employed shall at any time falls below 20.
- 2. The wage limit Rs. 15,000/- is applicable for the contribution to the Fund in respect of international workers
- 3. The employer cannot reduce wages of the employee to avoid his liability under the Act.
- 4. If an employee is transferred from one employment to another, the balance at his credit in his PF Account cannot be transferred to the new establishment.
- 5. The Central Government may add to amend or vary either prospectively or retrospectively, the scheme, Pension Scheme or the Insurance Scheme
- 6. Where the pay of an employee exceeds Rs. 15,000/- the contribution to insurance scheme is restricted to Rs. 15,000/-.
- 7. Contribution to pension scheme is recoverable when the employee crosses 58 years of age
- 8. The employer shall in the first instance pay the contribution payable by himself and also behalf of the member employed by him through a contractor.
- 9. The PF scheme is applicable to the tea factories in the State of Assam
- 10. The EPF Act is applicable to any establishment registered under the Co-Operative Societies Act, 1912.
- 11. Fine may be recovered from the employed person by instalments

QUESTION BANK



CA AKASH AGARWAL

ESI, 1948



Q3. Fill in the blanks

1. EPF Act is applicable to every establishment employing _____ or more persons.
2. The contribution or employer to the Fund is _____ of basic wages, dearness allowance and retaining allowance, if any.
3. The Pension fund is administered by the _____
4. The Employee's Deposit Linked Insurance Scheme, 1976 came into effect from _____
5. The contribution to insurance fund is to be remitted by the employer within _____ days of the close of the month.
6. The wage limit contribution under the scheme has been fixed at Rs. 15,000/- with effect from _____
7. The Central Government may give exemption to any establishment considering its _____
8. Contribution to EPF is payable by _____ and _____
9. _____ is not covered under the EPF Act.
10. Section 5AA provides for the appointment of _____ by the Central Government to assistant the Central Board in the performance of its functions.

ANSWERS

MCO	TRUE or FALSE	FILL UPS
1. D	1. TRUE	1. 20%
2. A	2. FALSE	2. 10%
3. D	3. TRUE	3. Central Board
4. B	4. FALSE	4. 01.09.1976;
5. D	5. TRUE	5. 15
6. C	6. TRUE	6. 01.09.2014;
7. C	7. FALSE	7. Financial position;
8. A	8. TRUE	8. Employer, employee;
9. B	9. FALSE	9. Apprentice
10. D	10. FALSE	10. Executive Committee
11. C	11. FALSE	
12. B		
13. C		

4. EMPLOYEES STATE INSURANCE ACT, 1948

EMPLOYEES STATE INSURANCE ACT, 1948

[IP. June 2017]

[7 Marks]

Q1. Who is an insurable employee under ESI Act, 1948?

Answer:

As per Section 38 of ESI Act, 1948, that subject to provisions of the Act, all **employees** in factories or establishments to which this Act applies **shall be insured** in manner as provided in Act. Every employee of a factory or establishment to which the Act applies is an insurable person. But the following persons are **not included** in list of **insurable employees**:

- > Any member of the **Indian naval, military or air force**.
- > Any person so employed **whose wages** (excluding remuneration for overtime work) **exceed such wages** as may be prescribed by the CG].
- > **Workers in mines** subject to Mines Act, 1952.
- > Workers in a **railway running shed**.

For the last 2 points, the Act is not applicable leading to exclusion of workers from the list.

[IP. June 2017 & Dec 2019]

[10 & 7 Marks]

Q2. What are the different purposes for which employees state insurance fund may be utilized by the CG?

Or

Mention any 7 purposes for which the ESI fund may be expended.

Answer:

As per Section 28 of Employees' State Insurance Act, 1948, CG **may utilize** the **state insurance fund** only for the following purposes:

- > **Payments of benefits** and provision of **medical treatment** and **attendance to insured persons** and to their families and defray the charges and costs in connection therewith
- > **Payments of fees and allowances** to members of the corporation, the standing committee and the Medical Benefit Council, the Regional Board, Local Committees and Regional Local Medical Councils.

QUESTION BANK



CA AKASH AGARWAL

ESI, 1948



- Establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary service for the benefit of insured persons and to their families.
- Defraying the cost of auditing the accounts of the corporation and of the valuation of its assets and liabilities.
- Defraying the cost of the Employees' Insurance Courts set up under this Act.
- Payment of any sums under any contract entered into for the purpose of this Act by the corporation or the standing committee or any officer duly authorized by the corporation or the standing committee in that behalf.
- Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act.
- Payment of any sums under any decree, order or award of any court or tribunal against the corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceedings or claim instituted or made against the corporation.
- Defraying expenditure within limits prescribed on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured person who have been disabled or injured.
- Such other purposes as may be authorized by the corporation with the previous approval of the CG.
- Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident fund and other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act.
- Payment of contributions to any SG, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to the insured person and where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation.

[PP. Dec 2018 & July 2023]

[6 & 5 Marks]

Q3. Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948.

Answer:

As per Section 46 of Employees State Insurance Act, 1948 the insured persons or their dependents shall be entitled to the following benefits

- Periodical payments to any insured person in case of his sickness;

- Periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage;
- Periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee;
- Periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee;
- Medical treatment for and attendance on insured persons;
- Payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.
- The amount of such payment shall not exceed such amount as may be prescribed by the CG.
- The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.
- The Corporation may at request of appropriate Government extend the medical benefits to the family if insured person subject to certain conditions.

[IP. Dec 2022]

[5 Marks]

Q4. Write short note on: Duties of medical benefit council.

Answer:

As per Section 22 of Employees' State Insurance Act, 1948, the medical benefit Council shall:

- Advise the Corporation, Standing Committee on matters relating to the administration of medical benefit, the certification of purposes of the grant of benefits & other connected matters;
- Have such powers & duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment & attendance; &
- Perform such other duties in connection with medical treatment & attendance as may be specified in the regulations.

[MTP. Dec. 2019, Dec. 2022 & Dec 2024]

[7 Marks]

Q5. Define the term 'Immediate Employer' and Employee' under ESI act.

Or

What do you infer from the word "Employees" under the Employees State Insurance Act, 1948?

Answer:

Immediate employer

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CA AKASH AGARWAL

ESI, 1948



[MTP, Dec. 2020 & Dec. 2023]

[8 Marks]

- Section 2(13) defines the terms 'immediate employer' in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor.

Employee

Section 2(9) defines the term "employee" as any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and-

- who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
- who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
- whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the productions of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time but does not include-
- any member of the Indian naval, military or air forces; or any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government provided that an employee whose wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

Q6. Describe contributions payable under the ESI Act, 1948. Discuss the methods of recovery of contribution.

Answer:

Contributions

- The contribution payable under this Act is of two types
 - one is the contribution of the employer and
 - the other is the contribution of the employee which is recovered from his wages and remitted to the Fund.
- The present rate contribution is 3.25% and 0.75% of workers' wages by employers and employees respectively.
- The contribution shall be paid in a bank duly authorized corporation within 21 days of the last day of the calendar month in which the contribution falls due for any wage period.
- The employer is required to file monthly contributions online through ESIC portal on a monthly basis in respect of all its employees after duly registering them. Through this, the employer has to file employee wise number of days for which wages paid and the amount of the wages paid respectively to ascertain the amount of contributions payable.
- The total amount of contribution, both by the employer and the employee, for each month is to be deposited in any branch of SBI in cash or by cheque or demand draft on generation of such a challan through ESIC portal using credentials. The contributions can also be paid through SBI internet banking.

Recovery of contributions

- Section 45B provides that any contribution payable under this Act may be recovered as an arrear of land revenue.
- Section 45C provides that the authorized officer may issue certificate to Recovery Officer, who in turn proceed to recover the amount by one or more of the modes mentioned below-
 - attachment and sale of moveable or immovable property of the factory or establishment or, as the case may be, the principal, or immediate employer;
 - arrest of the employer and his detention in prison;
 - appointing a receiver for the management of the movable or immovable properties of the factory or establishment or, as the case may be, the employer.
- The attachment shall first be effected against the properties of the factory or the establishment and such attachment and sale is insufficient for recovering the whole of the amount of arrears, the Recovery Officer may take such proceedings against the property of the employer.

QUESTION BANK



CA AKASH AGARWAL

ESI, 1948



[RTP. Dec 2018.]

Q7. Explain the composition of Medical benefit council, under Employees State Insurance Act, 1948.

Answer:

As per section 10 of Employees State insurance Act, 1948, the Central Government shall constitute a Medical Benefit Council consisting of:

- the Director General, Health Services, ex officio, as Chairman;
- a Deputy Director General, Health Services, to be appointed by the Central Government;
- the medical commissioner of the Corporation, ex officio;
- one member each representing each of the States (other than Union Territories) in which this Act is in force to be appointed by the State Government concerned;
- three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;
- three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and
- Three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

[MQP. June 2023.]

[8 Marks]

Q8. With reference to the Employees State Insurance Act in India examine what type of organisations are covered under provisions of this Act.

Answer:

The ESI Act extends to whole of India. This Act applies to

- in the first instance applicable to all factories, including factories belonging to the Government, other than season factories;
- the appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of Central Government, after giving one month's notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or classes of establishments, industrial, commercial, agricultural or otherwise;
- a factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit

specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.

In 'Employees' State Insurance Corporation V. Premal' – 2009 LLR 282 (Ker HC) it was held that ESI scheme will be applicable to establishment preparing sweets with the aid of LPG.

In 'Kuriacose V. Employees' State Insurance Corporation' – (1988) 2 CLR 301 (Ker) it was held that once the Act has become applicable to a factory or an establishment, its application will be continuous.

[MQP. Dec 2023.]

[7 Marks]

Q9. Inspect whether an employee can be dismissed or punished during sickness under "Employees State Insurance Act, 1948"?

Answer:

Section 73 provides that no employer shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall be, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period which he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulars to arise out of the pregnancy or confinement rendering the employee unfit for work.

[PP. DEC 2019]

[5 Marks]

Q10. Short Note on Dependent.

Section 2(6A) of The Employees' State Insurance Act, 1948, defines the term 'dependent' as any of the following of a deceased insured person:

- a widow, a legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter;
- a widowed mother;
- if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;
- if wholly or in part dependent on the earnings of the insured person at the time of his death-
- a parent other a widowed mother;
- a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor;
- a minor brother or an unmarried sister or a widowed sister if a minor;
- a widowed daughter-in-law;
- a minor child of a pre-deceased son;

QUESTION BANK



CA AKASH AGARWAL

ESI, 1948



- a minor child of a pre-deceased daughter where no parent of the child is alive; or
- a paternal grand-parent if no parent of the insured person is alive.

EXTRA QUESTIONS

Q11. Write a short notes on -

- Seasonal factory
- Medical Benefit Council

Ans:

(a) Section 2(19A) defines the term 'Seasonal factory' as a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortications of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year-

- ⊙ in any process of blending, packing or repacking of tea or coffee; or
- ⊙ in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify.

(b) Section 10 provides for the constitution of Medical Benefit Council consisting of-

- ⊙ the Director General of ESI, ex-officio - Chairman;
- ⊙ the Director General, Health Services, ex-officio - Co-Chairman;
- ⊙ the Medical Commissioner of the Corporation - ex-officio;
- ⊙ one member each representing each state other than Union territories;
- ⊙ three members representing employers;
- ⊙ three members representing employees;
- ⊙ three members representing the medical profession; among them one shall be a woman.

Q12. Distinguish between the 'permanent partial disablement' and 'permanent total disablement'.

Ans:

Permanent partial disablement

Section 2(15A) defines the expression 'permanent partial disablement' as such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. Every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement.

Permanent total disablement

Section 2(15B) defines the expression 'permanent total disablement' as such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident in such disablement. The permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100% or more.

Q13. What are the disputes that can be settled by ESI Court?

Ans:

Section 74 provides that the State Government shall constitute an ESI Court for such local area as may be specified in the notification. Section 75 provides that ESI Court may decide any question or dispute arises as to-

- whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution; or
- the rate of wages or average daily wages of an employee for the purposes of this Act; or
- the rate of contribution payable by a principal employer in respect of any employee;
- the person who is or was the principal employer in respect of any employee; or
- the right of any person to any benefit and as to the amount and duration thereof; or
- any direction issued by the Corporation on a review of any payment of dependents' benefit; or
- any other matter which is in dispute between-
 - a principal employer and the Corporation; or
 - a principal employer and an immediate employer; or
 - a person and the Corporation; or
 - an employee and a principal or immediate employer,

Q14. What are the punishments described under Section 85 of the Act for failure to pay contribution etc.

Ans:

- Section 85: This section deals with penalties for non-compliance with the various provisions of the ESI Act and Regulations made there under. Such non-compliance with any of the provisions of the Act constitutes an offence committed by the employer of a covered Factory / Establishment which is punishable under Section 85(a) to 85(g) of the Act.
- Section 85(a): Envisages that if an employer fails to pay any contribution payable under the Act within the prescribed time-limit, he thus commits an offence u/s 85(a) of the Act, which is punishable with imprisonment for a term which may extend to three years u/s 85(i) of the Act, provided it shall not be less than 1 year and fine of ' 10,000 u/s 85(i) (a) of the Act where

QUESTION BANK



CA AKASH AGARWAL

ESI, 1948



employees' share of contribution is deducted by the employer from their wages but not paid. In other case where term of imprisonment shall not be less than 6 months and fine of 5,000 u/s 85(i) (b).

- Section 85(b) to 85(g): Says that if an employer commits an offence under this section for noncompliance with any other provisions of the Act, which is punishable with imprisonment for a term which may extend to 1 year or with fine up to ` 4,000 or with both.
- Section 85-A: This section deals with enhanced punishment in certain cases after previous conviction. If any employer convicted by a Court for an offence punishable under the Act, committing the same offence, shall, for every such subsequent offence, be punished with imprisonment for a term which may extend to 2 years and with fine of ` 5,000.
- It is provided that if such subsequent offence is for failure to pay contribution payable under the Act, the employer shall, for every such subsequent offence, be punished with imprisonment for a term which may extend to 5 years but which shall not be less than 2 years and shall be liable to pay fine of ` 25,000.
- Section 85-B: Provides that the corporation may recover damages from the employer by way of penalty under this section if any employer fails to pay contribution payable under the Act within the specified time-limit or pays contribution belatedly provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard
- Section 85-C: Provides that where an employer is convicted for an offence of non-payment of contribution under this Act, the Court in addition to giving any punishment by order, direct him to pay the amount of contribution for which he was convicted within a time period. The Court can also extend the time given periodically.

Q15. What is the wage limit fixed the Central Government for coverage of an employee under the ESI Act?

Ans:

- (1) The Central Government has prescribed the wage limit JOJ coverage of an employee under Section 2(9) of the Act, as Rs. 21,000 per month.
- (2) Further it is provided that an employee whose wages (excluding remuneration for overtime work) exceeds Rs. 21,000 a month at any time after and not before beginning of the contribution period, shall continue to an employee until the end of the said period.

Q16. What is the wage limit fixed the Central Government for coverage of an employee under the ESI Act?

Ans:

- (1) The Central Government has prescribed the wage limit JOJ coverage of an employee under Section 2(9) of the Act, as Rs. 21,000 per month.

(2) Further it is provided that an employee whose wages (excluding remuneration for overtime work) exceeds Rs. 21,000 a month at any time after and not before beginning of the contribution period, shall continue to an employee until the end of the said period.

Q17. What is meant by 'Principal Employer specified in as defined in the ESI R 1948? State its obligations.

Ans:

Section 2(17) defines the term 'principal employer as-

- (1) In a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where person has been named as the manager of the factory under the Factories Act 1948, the person so named;
- (2) any establishment under the control of any department of any Government in India, the authority appointed 2 such Government in this behalf or where no authority is so appointed, the head of the Department;
- (3) In any other establishment, any person responsible for the supervision and control of the establishment.

Obligations:

- Get your Factory establishment registered after the Act becomes applicable.
- The principal employer shall pay in respect of all employer, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.
- Maintain adequate books and records as required under the Act. Furnish any requisite information promptly as and when asked for by Authorities.

Q18. Give the answer in 'Yes' or 'No': - Whether the following items are includible in the definition of 'Wages' as per the ESI Act, 1948?

Item	Answer
(1) LIC Premium subsidy	Yes
(2) Incentive	Yes
(3) Any gratuity payable on discharge	No
(4) Any travel allowance	No
(5) Overtime allowance	Yes
(6) Bonus or Ex-Gratia	No

QUESTION BANK



CA AKASH AGARWAL

ESI, 1948



Q19. State the circumstances under which a person shall be disqualified as a member of the Corporation, Standing Committee or the Medical Benefit Council.

Ans:

Section 13 provides that a person shall be disqualified as a member of the Corporation, the Standing Committee or the Medical Benefit Council

- if he is declared to be of unsound mind by a competent court; or
- If he is an undischarged insolvent; or
- if he has directly or indirectly by himself or by his partner any interest in a subsisting contract with, or any work being done for the Corporation except as a medical practitioner or as a shareholder of a company; or
- if before or after commencement of this he has been convicted of an offence involving moral turpitude.

OBJECTIVES

Q1. Multiple Choice Question

1. The contribution shall be paid in a bank within ___ days of the last day of the calendar month in which the contribution fall due for any wage period.
 - (a) 7
 - (b) 14
 - (c) 21
 - (d) 30
2. An appeal shall lie to High Court from the orders of ESI within ___ days from the date of order of the ESI Court.
 - (a) 30
 - (b) 60
 - (c) 90
 - (d) None of the above
3. A member of the Corporation shall cease to be a member if he fails to attend ___ consecutive meeting.
 - (a) 3
 - (b) 5
 - (c) 7
 - (d) None of the above
4. ESI Fund consists of
 - (a) Contribution
 - (b) Grants from Government
 - (c) Donations
 - (d) All of the above
5. The Corporation may with the approval of ___ establish and maintain in a State, hospitals, dispensaries etc
 - (a) Central Government
 - (b) State Government
 - (c) Local Authority
 - (d) None of the above
6. Who will not the following be considered as an employee?
 - (a) Canteen Workers
 - (b) Casual Workers
 - (c) Partners
 - (d) Part Time Employee

QUESTION BANK

CA AKASH AGARWAL

ESI, 1948

7. Who, among the following, is not the Principal Employer?
 - (a) Occupier of the factory
 - (b) Owner of the factory
 - (c) Legal representative of the owner
 - (d) Legal representative of the contractor
8. Seasonal one which is engaged for a period not exceeding _____ in a year
 - (a) 7 months
 - (b) 6 months
 - (c) 3 months
 - (d) None of the above
9. Which, among the following, will not be included in the definition of 'wages'?
 - (a) Payment made on authorized leave
 - (b) Travelling allowance
 - (c) Payment made on lock-out
 - (d) Payment made for lay-off
10. ESI Corporation is a
 - (a) Partnership Firm
 - (b) LLP
 - (c) Body Corporate
 - (d) HUF
11. Employee's State Insurance Act, 1948 is applicable to all:
 - (a) Factories including factories belonging to Government and seasonal factories.
 - (b) Factories excluding seasonal factories.
 - (c) Factories including factories belonging to Government and seasonal but excluding Silk factory.
 - (d) Factories including factories belonging to Government but excluding seasonal factories.
12. The term 'family' as defined in ESI Act, 1948 does not include
 - (a) A spouse
 - (b) A minor adopted child
 - (c) A dependent unmarried daughter
 - (d) An independent married sister
13. Who is an insurable employee under ESI Act, 1948?
 - (a) Workers in mines subject to Mines Act, 1952 [Sec. 2(12)]
 - (b) Workers in a railway running shed [Sec. 2(12)]
 - (c) Any member of [the Indian] naval, military or air forces [Sec. 2(9)]

(d) All employees in factories or establishments to which this act applies

14. Under Employee's State Insurance Act, 1948, the term of the office of the members of Medical Benefit Council shall be:

- (a) 2 Years
- (b) 4 Years
- (c) 5 Years
- (d) 10 Years

15. The Employees' State Insurance Corporation is:

- (a) Hindu Undivided Family
- (b) Local Authority
- (c) Charitable Institution
- (d) Body Corporate

16. Permanent disablement benefit is paid at the rate of:

- (a) 90%
- (b) 79%
- (c) 120%
- (d) 100%

17. Under ESI Act, 1948, seasonal factory is one which is engaged for a period not exceeding:

- (a) 3 months in year
- (b) 6 months in year
- (c) 7 months in year
- (d) 8 months in year

Q2. True or False

1. The members of Indian Naval, military or air force is coming under the definition of 'employee' under ESI Act
2. Wage does not include any gratuity payable on discharge
3. Every employee is to register himself under the provisions of ESI Act.
4. An employee insured under the ESI Act can also claim compensation under the Workmen Compensation Act.
5. The benefits of medical benefits under this Act are assignable
6. Civil Court has no jurisdiction to decide or deal with any dispute or to dispute on any liability to be decided by a medical board or tribunal or ESI Court
7. Attachment of bank account of the defaulter can be undertaken for recovery of dues
8. The Central Government cannot supersede the ESI Corporation.

QUESTION BANK



CA AKASH AGARWAL

ESI, 1948



9. Employees represent the Station Commission of ESI Corporation.
10. There shall be one woman among the members representing the medical profession in the Medical Benefit Council.
11. The term 'employed person' includes the legal representatives of a deceased employed person.

Q3. Fill in the Blanks

1. The two types of permanent establishment is ___ and ___
2. The term of the members of Medical Benefit Council shall be ___
3. The rate of contribution is ___ and ___ of worker's wages by employees and employers respectively
4. The amount recoverable under this Act may be recovered as if it ___
5. Standing Committee shall consist of ___ members of the Corporation;
6. ___ is the ex-officio member of Medical Benefit Council;
7. A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to ___
8. The payment towards the expenditure on the funeral of the deceased insured person is payable to the ___
9. Confinement is the labor resulting in the issue of living child or labor after ___ of pregnancy resulting in the issue of child, whether alive or dead.
10. Factory is defined as any premises including the precincts thereof whereon ___ or more persons are employed on any day of the preceding ___
11. The term of office of a member of the standing committee, constituted under ESI Act, shall be two years from the date on which his election is ___
12. The term of office of representative member of the medical benefit council, constituted under ESI Act, shall be ___ years from the date on which his election is notified.
13. The ESI Act, 1948 is the first major legislation on ___ security for the employees in India.

ANSWERS

MCQ	TRUE or FALSE	FILL UPS
1. C	1. FALSE	1. Permanent partial disablement, permanent total disablement
2. B	2. TRUE	2. 4 years
3. A	3. TRUE	3. 3.25%, 0.75%
4. D	4. FALSE	4. Were an arrear of land revenue
5. B	5. FALSE	5. Three
6. C	6. TRUE	6. Medical Commissioner of the Corporation
7. D	7. TRUE	7. Central Government
8. A	8. FALSE	8. Eldest surviving member of the family
9. B	9. TRUE	9. 26 Weeks
10. C	10. TRUE	10. 10 Months, 12 Months
11. D	11. TRUE	11. Notified
12. D		12. 4
13. D		13. Social
14. B		
15. D		
16. D		
17. C		

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



5. CODE ON WAGES, 2019

Code on Wages 2019

PREVIOUS YEAR QUESTIONS & MOP & RTP

[PP. Dec 2016.]

[5 Marks]

Q1. There is no time limit for payment of bonus to entitled employees. State correct position based on Rules.

Answer:

- As per Section 39 of The Code on Wages, 2019, bonus shall be paid by crediting it in his bank account within period of 8 months from close of the accounting year.
- However, where there is a dispute pending before any authority, in such case, within 1 month from the date of the award becomes enforceable or the settlement comes into operation in respect of such dispute.
- If there is dispute for payment at higher rate, the payment will be made within period of 8 months from close of the accounting year.
- So, the given statement is incorrect as there is time limit for payment of bonus.

[PP. Dec 2018 & July 2023.]

[9 & 10 Marks]

Q2. Explain the procedure for fixing and revising minimum wages under Code on Wages, 2019.

OR

Elaborate the procedure for fixing and revising minimum wages under Code of Wages, 2019.

OR

Write short note on: Review of minimum wages under Code on Wages, 2019.

Answer:

As per Section 8 of The Code on Wages, 2019, in fixing minimum rates of wages in respect of any scheduled employment for the 1st time or in revising minimum rates of wages so fixed, the appropriate Government shall follow:

- Appointment of committees: The appropriate Government shall appoint as many committees and subcommittees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be; or

- Publication of proposals in the Official Gazette: The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages & shall not less than 2 months from the date of the notification for making any representations.
- After considering the advice of the committee or committees or all representations received by it before the date specified in the notification, the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment.
- The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides.

[PP. June 2016.]

[4 Marks]

Q3. The Code on Wages, 2019 prescribes payment of wages in cash only. Comment.

Answer:

- Minimum wages payable under this Act shall be paid in cash.
- Appropriate Government may by notification in the Official Gazette authorise the payment of minimum wages either wholly or partly in kind.
- If Appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates the Appropriate Government may by notification in the Official Gazette authorise the provision of such supplies at concessional rates.
- The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised above shall be estimated in the prescribed manner.
- Where it has been the custom to pay wages wholly or partly in kind, the Appropriate Government being of the opinion that it is necessary in the circumstances of the case.

[PP. June 2017.]

[5 Marks]

Q4. Write short note on: Limit of deductions from wages.

Answer:

- As per Section 18(1) of Code on Wages, 2019, notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of employees, except those as are authorised under this Code.
- As per Section 18(3) of Code on Wages, 2019, the total amount of deductions which may be made u/s section 8(2) of the Code in any wage-period from the wages of any employed person shall not exceed 50% of such wages.
- As per Section 18(4) of Code on Wages, 2019, if the deductions exceed 50% then it shall be recovered as may be prescribed.

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



[PP. Dec 2017.]

[10 Marks]

Q5. What are the different kinds of deduction that can be made from wages under the Code on Wages, 2019?

Answer:

As per Section 18(1) of Code on Wages, 2019, no deductions can be made from the wages except authorised by the Code.

As per Section 18(2) of Code on Wages, 2019, the following deductions can be made from employees' wages:

- Fines:
- Deductions for absence from duty;
- Deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default;
- Deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the SG by notification in the Official Gazette;
- Deductions for such amenities or services supplied by the employer as the SG or any officer specified by it in this behalf may by general or special order authorize;
- Deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance) and the interest due in respect thereof or for adjustment of over-payments of wages;
- Deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the appropriate Government and the interest due in respect thereof;
- Deductions for recovery of loans granted for house building or other purposes approved by the appropriate Government and the interest due in respect thereof;
- Deductions of Income-tax payable by the employed person
- Deductions for subscriptions to and for repayment of advances from any provident fund or any pension fund or any security fund approved in this behalf by the appropriate Government during the continuance of such approval
- Deductions for payments to co-operative societies approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office, and
- Deductions made with the written authorization of the employed person for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the membership of any trade union registered;
- Deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice to bill to collect or to account for the appropriate

charges due to that administration, whether in respect of fares, freight, demurrage in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise:

- Deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;
- Deductions made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the CG may, by notification in the Official Gazette specify.

[PP. Dec 2019.]

[5 Marks]

Q6. Write short note on: Overtime under Code on Wages, 2019.

Answer.

- As per Section 14 of Code on Wages, 2019, where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate which shall not be less than twice the normal rate of wages.
- When a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to overtime wages.
- A register in this regard shall be maintained. If no overtime wage is paid for a particular month a NIL entry in register should be made.

[PP. July 2023.]

[8 Marks]

Q7. Enumerate the procedure of imposition of fine under Code on Wages, 2019.

Answer.

As per Section 19 of the Code, the fines can be imposed as follows:

- No fine shall be imposed on any employee save in respect of those acts and omissions on his part were done with the previous approval of the appropriate Government or of such authority as may be prescribed under a notice. A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.
- No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to 3% of the wages payable to him in respect of that wage-period.
- No fine shall be imposed on any employee who is under the age of 15 years.

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



- No fine imposed on any employee shall be recovered from him by instalments or after the expiry of 90 days from the day on which it was imposed.
- Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- All finances and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

[PP Dec.23, MQP June 2023 & Dec 2023]

[7 Marks]

Q8. Reconcile the time limit for payment of wages keeping in view the provision of The Code of Wages, 2019.

Or.

Demonstrate the time limit for the payment of wages under Code on Wages, 2019.

Answer:

Time limit for payment of wages Section 17 of the Code of Wages, 2019-

- 1) The employer shall pay or cause to be paid wages to the employees, engaged on:
 - a) daily basis, at the end of the shift;
 - b) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;
 - c) fortnightly basis, before the end of the second day after the end of the fortnight;
 - d) monthly basis, before the expiry of the seventh day of the succeeding month.
- 2) Where an employee has been:
 - a) removed or dismissed from service; or
 - b) retrenched or has resigned from service, or
 - c) became unemployed due to closure of the establishment,
the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.
- 3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid. Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

[PP Dec 2023]

[7 Marks]

Q9. State the procedure of payment of undisbursed wage in case of death of employed person under Code on Wages, 2019.

Answer:

As per Section 44 of Code on Wages, 2019, subject to the other provisions of this Code, all amounts payable to an employee under this Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known:

- Be paid to the person nominated by him in this behalf in accordance with the rules made under this Code, or
- Where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the such authority, as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.
- Where in accordance with the provisions of sub-section (1), all amounts payable to an employee under this Code are:
 - Paid by the employer to the person nominated by the employee, or
 - Deposited by the employer with the authority referred to in clause (b) of sub-section (1),

Then, the employer shall be discharged of his liability to pay those amounts.

[PP Dec 2023]

[7 Marks]

Q10. Demonstrate the time limit for the payment of wages under Code on Wages, 2019

Answer:

As per Section 17(1) and 17(2) of Code on Wages, 2019, the employer shall pay or cause to be paid wages to the employees, engaged on:

Daily basis	<u>At the end of the shift.</u>
Weekly basis	<u>On the last working day of the week</u>
Fortnightly basis	<u>Before the end of 2nd day after end of fortnight.</u>
Monthly basis	<u>Before the expiry of the 7th day of succeeding month</u>
Removed or dismissed or retrenched or has resigned or become unemployed due to closure of establishment of employer	<u>Within 2 working days of his removal, dismissal, retrenchment, resignation or as the case may be.</u>

QUESTION BANK

CA AKASH AGARWAL

CODE ON WAGES

As per Section 17(3) of Code on Wages, 2019, notwithstanding anything contained above, the appropriate Government may provide any other time limit if it considers it necessary as per the circumstances.

As per Section 17(4) of Code on Wages, 2019, nothing above shall affect the payment of wages under any other law for the time being in force.

[MQP Dec 2023]

[7 Marks]

Q11. Discuss the applicability of 'Eligibility for Bonus' under the act "The Code on Wages, 2019".

Answer:

Section 26 onwards the code talks about provisions relating to payment of bonus: Eligibility for Bonus:

- 1) There shall be paid to every employee, drawing wages not exceeding such amount per mensem, as determined by notification, by the appropriate Government, by his employer, who has put in at least thirty days work in an accounting year, an annual minimum bonus calculated at the rate of eight and one-third per cent. of the wages earned by the employee or one hundred rupees, whichever is higher whether or not the employer has any allocable surplus during the previous accounting year.
- 2) For the purpose of calculation of the bonus where the wages of the employee exceed such amount per mensem, as determined by notification by the appropriate Government, the bonus payable to such employee under sub-sections (1) and (3) shall be calculated as if his wage were such amount, so determined by the appropriate Government or the minimum wage fixed by the appropriate Government, whichever is higher.
- 3) Where in respect of any accounting year referred to in sub-section (1), the allocable surplus exceeds the amount of minimum bonus payable to the employees under that subsection, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus which shall be an amount in proportion to the wages earned by the employee during the accounting year, subject to a maximum of twenty per cent. of such wages.
- 4) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section.
- 5) Any demand for bonus in excess of the bonus referred to in sub-section (1), either on the basis of production or productivity in an accounting year for which the bonus is payable shall be determined by an agreement or settlement between the employer and the employees, subject to the condition that the total bonus including the annual minimum bonus referred to in sub-section (1) shall not exceed twenty per cent. of the wages earned by the employee in the accounting year.
- 6) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such

establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36.

- 7) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply subject to the following modifications, namely:

- a) for the sixth accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;
- b) for the seventh accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

- 8) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation 1: For the purpose of sub-section (6), an employer shall not be deemed to have derived profit in any accounting year, unless: (a) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income tax law; and (b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation 2: For the purposes of sub-sections (6), (7) and (8), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

- 9) The provisions of sub-sections (6), (7) and (8) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments.

**CODE ON WAGES**

[7 Marks]

(a) The bonus shall be paid out of the allocable surplus which shall be an amount equal to sixty per cent. in case of a banking company of the available surplus

(b) in any other case sixty per cent of such available surplus

- Section 15(1) provides that if the allocable surplus, in any accounting year, exceeds the amount of maximum bonus payable then the excess shall subject to a limit of 20% of the total salary or wage of the employees be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of bonus.
- Section 15(2) provides that where for any accounting year, there is no available surplus or allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees and there is no amount or sufficient amount carried forward and set on which could be utilized for the purpose of payment of the minimum bonus, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in Fourth Schedule.
- Section 15(4) provides that where in any accounting year any amount has been carried forward and set on or set off, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year, shall first be taken into account.

[7 Marks]

- Computation of gross profits;
- Sums deductible from gross profits;
- Computation of available surplus;
- Computation of allocable surplus

Section 16 of the Act provides that the gross profit derived by an employer from an establishment in respect of the accounting year shall-

- in the case of a banking company, be calculated in the manner as may be prescribed by the Central Government;

- any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, for the time being in force, as the case may be;
- subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- such further sums in respect of the employer as may be prescribed by the Central Government.

➤ Available surplus in respect of the accounting year commencing on any day in a year after the commencement of this Code and in respect of every subsequent accounting year shall be the aggregate of:

- the gross profits for that accounting year after deducting therefrom the sums
- an amount equal to the difference between
 - the direct tax, calculated in accordance with the provisions of section 35, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
 - the direct tax, calculated in accordance with provisions of section 35, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year

- The bonus shall be paid out of the allocable surplus which shall be an amount equal to sixty per cent. in case of a banking company and sixty-seven per cent. in case of other establishment. of the available surplus and the available surplus shall be the amount calculated in accordance with section 33.
- Audited accounts of companies shall not normally be questioned.
- Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



EXTRA QUESTIONS

Q14. How are Central Advisory Board and State Advisory Boards constituted?

Answer

- The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government:
 - representing employers;
 - representing employees which shall be equal in number of the members specified in clause (a);
 - independent persons, not exceeding one-third of the total members of the Board; and
 - five representatives of such State Governments as may be nominated by the Central Government
- One-third of the members referred to in sub-section (1) shall be women and a member specified in clause
- of the said sub-section shall be appointed by the Central Government as the Chairperson of the Board.

Q15. Does the Code provide for appointment of Inspector-cum-Facilitators and what are their powers?

Answer

The appropriate Government may, by notification, appoint Inspector-cum-Facilitators for the purposes of this Code who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.

- The Inspector-cum-Facilitator may:
 - advice to employers and workers relating to compliance with the provisions of this Code;
 - inspect the establishments as assigned to him by the appropriate Government, subject to the instructions or guidelines issued by the appropriate Government from time to time.
- Subject to the provisions of sub-section (4), the Inspector-cum-Facilitator may:
 - examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe, is a worker of the establishment;
 - require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;

- search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;
- bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and
- exercise such other powers as may be prescribed.

Q16. What are the powers of officers of appropriate Government to impose penalty in certain cases under the Code?

Answer

1. Notwithstanding anything contained in section 52, for the purpose of imposing penalty under clauses (a) and (c) of sub-section (1) and sub-section (2) of section 54 and sub-section (7) of section 56, the appropriate Government may appoint any officer not below the rank of Under Secretary to the Government of India or an officer of equivalent rank in the State Government, as the case may be, for holding enquiry in such manner, as may be prescribed by the Central Government.
2. While holding the enquiry, the officer referred to in sub-section (1) shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of such officer, may be useful for or relevant to the subject matter of the enquiry and if, on such enquiry, he is satisfied that the person has committed any offence under the provisions referred to in sub-section (1), he may impose such penalty as he thinks fit in accordance with such provisions.

Q17. How is the work wage and hours of work fixed under the Code?

Answer

1. In fixing minimum rates of wages for the first time or in revising minimum rates of wages under this Code, the appropriate Government shall either:
 - a) appoint as many committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be; or
 - b) by notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals shall be taken into consideration.

Hours of work is fixed under the Code as follows:

1. Where the minimum rates of wages have been fixed under this Code, the appropriate Government may:

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



- a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;
- b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
- c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

2. The provisions of sub-section (1) shall, in relation to the following classes of employees apply, only to such extent and subject to such conditions as may be prescribed, namely:

- a) employees engaged in any emergency which could not have been foreseen or prevented; (b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- b) employees whose employment is essentially intermittent;
- c) employees engaged in any work which for technical reasons has to be completed before the duty is over; and
- d) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

3. For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Q18. What are the powers of officers of appropriate Government to impose penalty in certain cases under the Code?

Answer

1. Notwithstanding anything contained in section 52, for the purpose of imposing penalty under clauses (a) and (c) of sub-section (1) and sub-section (2) of section 54 and sub-section (7) of section 56, the appropriate Government may appoint any officer not below the rank of Under Secretary to the Government of India or an officer of equivalent rank in the State Government, as the case may be, for holding enquiry in such manner, as may be prescribed by the Central Government.

2. While holding the enquiry, the officer referred to in sub-section (1) shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the

case to give evidence or to produce any document, which in the opinion of such officer, may be useful for or relevant to the subject matter of the enquiry and if, on such enquiry, he is satisfied that the person has committed any offence under the provisions referred to in sub-section (1), he may impose such penalty as he thinks fit in accordance with such provisions.

STUDY MATERIAL

Q19. Do employers have a responsibility for payment of various dues under the Code?

Answer

- In accordance with Section 43 of the Act, Every employer shall pay all amounts required to be paid under this Code to every employee employed by him. Where such employer fails to make such payment in accordance with this Code, then, the company or firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

STUDY MATERIAL

Q20. Elaborate the powers to fix the minimum wages?

Answer

- In accordance with sec 6, the appropriate Government shall fix the minimum rate of wages payable to employees in accordance with the provisions of section 8. The appropriate Government shall fix a minimum rate of wages:
 - For time work
 - For piece work
- Where employees are employed on piece work, the appropriate Government shall fix a minimum rate of wages for securing such employees a minimum rate of wages on a time work basis.
- The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:
 - By the hour; or
 - By the day; or
 - By the month
- Where rates of wages are fixed by the hour or by the day, or by the month, the manner of calculating the wages shall be such, as may be prescribed.

Q21. When shall an Employee be disqualified from receiving Bonus under Code on wages?

Answer

- An employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for:

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



- a) fraud; or
- b) riotous or violent behaviour while on premises of the establishment; or
- c) theft, misappropriation or sabotage of any property of the establishment; or
- d) conviction for sexual harassment.

Q22. Can customary bonus be adjusted against bonus payable under the code?

Answer

- Section 37 of the Code lays down requirements of adjustment of customary or interim bonus against bonus payable under this Code. Where in any accounting year:
 - an employer has paid any puja bonus or other customary bonus to employee; or
 - an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable, then, the employer shall be entitled to deduct the amount of bonus paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

Q23. Can customary bonus be adjusted against bonus payable under the code?

Answer

- Section 37 of the Code lays down requirements of adjustment of customary or interim bonus against bonus payable under this Code. Where in any accounting year:
 - an employer has paid any puja bonus or other customary bonus to employee; or
 - an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable, then, the employer shall be entitled to deduct the amount of bonus paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

Q24. Code on wages is not applicable on certain employees. Elaborate.

Answer

- Nothing in this Chapter shall apply to:
 - a) employees employed Life Insurance Corporation of India;
 - b) a seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;
 - c) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;
 - d) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;
 - e) employees employed at the Indian Red Cross Society or any other institution of a like nature including its branches, universities and other educational institutions, institutions including

hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;

- f) employees employed by the Reserve Bank of India;
- g) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify
- h) employees employed by inland water transport establishments operating on routes passing through any other country; and
- i) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to overall benefits under any other scheme of profit sharing available in such establishments to the employees.

CASE STUDIES

Q25. Kelson Limited has 2 separate units at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Code on Wages, 2019, whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer

- All the units shall be treated as separate establishments if all the units maintain separate B/S and P&L Account.
- Employees of the unit which is incurring losses are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment.
- But in case of their own unit, they are entitled to minimum bonus as per the provisions of Code on Wages, 2019, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).
- However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the units taken together.
- In given case, separate accounts are maintained so employees cannot claim bonus considering it a single unit.

Q26. An employee was drawing a salary of ₹9,500 per month. He joined his service on January 23rd, 2017 and remained absent from 11th February, 2017 to April 10th, 2017 due to temporary disablement caused by an accident arising out in due course of employment. Examine with reference to the Code on Wages, 2019, whether he is eligible for bonus for the year 2016-17?

Answer

As per Section 26 of Code on Wages, 2019, every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than 30 working days in an accounting year on wages as prescribed by

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



appropriate government, an annual **minimum bonus** of 8.33% of wages or ₹100 whichever is higher subject to **maximum 20%** of wages whether or not the employer has any allocable surplus. As per **Section 27** of Code on Wages, 2019, where an employee has not worked for all working days in an accounting year, the minimum bonus as specified above shall be **proportionately reduced**.

As per **Section 28** of Code on Wages, 2019, for calculation of 30 working days following days shall be counted:

- He has been laid off;
- He has been on leave with salary;
- He has been absent due to temporary disablement caused by accident arising out of & in course of employment; &
- She has been on maternity leave.

In given case, an employee joined on 23/01/2017 & was on leave from 11/02/2017 to 10/04/2017 due to temporary disablement arisen by accident while in employment. So, these days of leave shall be counted as per above provisions.

- His total working days are more than 30 days & hence he is eligible for bonus for year 2016-17.

Q27. Minu Limited earned super profits during the financial year. It intends to give a **maximum bonus** to its employees. In this regard you are asked to advise the company on permissible **maximum bonus** under the Code on Wages, 2019.

Answer

- As per **Section 26(3)** of The Code on Wages, 2019, in respect at any accounting year the **allocable surplus exceeds the amount of minimum bonus** payable to the employees, the employer shall, in lieu of minimum bonus, be bound to pay to every employee in respect of that accounting year-bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a **maximum 20%** of such salary or wage.
- In given case, the company will be free to give bonus at any rate exceeding 8.33% up to a maximum of 20% of the salary or wage earned by the employees during the accounting year.

Q28. Peter is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year:

- a. Overtime allowance
- b. Dearness allowance
- c. Commission on sales
- d. Employer's contribution towards pension fund
- e. Value of food

Examine as to which of the above payments form part of 'salary' of Peter under the provisions of the Code on Wages, 2019.

Answer

- As per **Section 2(y)** of Code on Wages, 2019 wages include all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment, & includes:
 - Basic wages;
 - Dearness allowance &
 - Retaining allowance, if any.
- But does not include:
 - Any bonus which does not form part of remuneration;
 - Value of house accommodation or of supply of light, water, medical attendance or other amenities of any service;
 - Travelling concession;
 - Contribution paid by employer to any pension fund, PF & interest thereon;
 - Overtime allowance;
 - House rent allowance;
 - Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
 - Any sum paid to employed person to defray expenses entailed on him by nature of his employment;
 - Remuneration payable under any award or settlement;
 - Any gratuity payable; &
 - Any commission payable to employee.

In given case, only dearness allowance shall form part of his salary.

Q29. The workers of a factory were paid a lump sum bonus during Id festival, which was not in a fixed time of the year. When the statutory bonus becomes due, can the employer adjust the festival bonus from it? What other dues, if any, may be deducted from the statutory bonus?

Answer

As per **Section 37** of The Code on Wages, 2019, where in any accounting year:

- Has paid any pooja bonus or
- Has paid a part of bonus payable under the Code then
The employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee in respect for that accounting year.
- If an employee is found **guilty of misconduct** causing financial loss to the employer, then, the employer can deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only.

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



- If an employee has not worked for all the working days in an accounting year, the minimum bonus of ₹100 or, as the case may be, of ₹ 60, if such bonus is higher than 8.33% of his salary or wage for the days he has worked in that accounting year, is proportionately reduced.

Q30. Als engaged in 2 types of job in a factory, that of mechanic and watchman. The wage rates are different for 2 different jobs. The employer calculates his minimum wage on an average rate. State whether this is correct, and explain your views as per Code on Wages, 2019.

Answer

Where an employee does two or more classes of work, to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at rate not less than the minimum rate in force in respect of each such class.

- Thus, employer just cannot pay him at simple average rate of both wages of both classes of job.

Q31. Anil Pvt. Ltd. imposed a fine on Anurag, one of its employees for regularly reporting late for work. The fine was imposed on 4th June 2014. The management wanted to recover the amount in November 2014 during half yearly instalment. Can the Company recover this amount of fine, state your views as per Code on Wages, 2019.

Answer

As per Section 19(6) of The Code on Wages, 2019, no fines can be recovered from employee by instalments after or after expiry of 90 days from the date on which it is imposed.

In given case, fine was imposed on 04/06/2014, so it can be recovered till 02/09/2014.

- So, ABC Pvt. Ltd. will not be able to recover the fine in November 2014 as the gap exceeded 90 days. Neither could it be recovered in instalments

Q32. Mr. Sharma is a supervisor in a factory drawing salary of ₹3500 pm. In a particular accounting year he was on 1 month leave with salary. His employer declared minimum bonus payable as per the Code on Wages, 2019, to all eligible employees. State in this connection:

- (i) What shall be the salary that shall be taken into account for the purpose of calculating bonus payable to him?
(ii) What shall be the total bonus payable to him in that accounting year?
(iii) What would be your answer if the company suffer losses in that accounting year?
(iv) Is bonus payable to him if he was illegally terminated?

Answer

(i) As per Section 26(1) of The Code on Wages, 2019, bonus shall be paid to every employee, drawing wages not exceeding such amount per mensem, as determined by notification, by appropriate government by his employer, who has put in at least 30 days' work in an accounting year.

- (ii) The total maximum bonus payable to him in that accounting year should be $₹(3500 \times 12 \times 8.33\%) = ₹3498.60$.

The total minimum bonus payable to him in that accounting year should be $₹(3500 \times 12 \times 20\%) = ₹8400$.

For the purpose of calculating the total working days, leave with salary or wages shall be deemed to be working days for the employee. Therefore, Mr. Sharma would be eligible for 12 months bonus.

- (iii) The employer is bound to pay minimum bonus, but this payment is subject to the other provisions of the Act.

(iv) As per Section 29 of The Code on Wages, 2019, notwithstanding anything contained in the Code, an employee shall be disqualified from receiving bonus under this Act if he is dismissed from service for Fraud or Riotous or violent behaviour while on the premises of the establishment or Thefts miss appropriation or sabotage of any property of the establishment. Where an employee was prevented from working by reason of an illegal order, he would be eligible for bonus.

Q33. A company having its registered head office in Kolkata has three departments in Delhi, Chennai and Mumbai. The company paid a minimum bonus under Payment of The Code on Wages, 2019, to all its entitled employees of head office excepting the employees of departments located outside Kolkata. State whether the employer was right

Answer

As per Section 3 of The Code on Wages, 2019, for the purpose of computation of bonus, an establishment shall include departments, undertakings, and branches. It is immaterial whether these are situated in same place or not.

Exception: A branch, department or undertaking shall not be treated as part of an establishment if the following 2 conditions are satisfied –

- A separate B/S and P & L A/c has been prepared for such branch, department or undertaking.
➤ Such branch, department or undertaking has never been treated as part of the establishment for the purpose of computation of bonus.

But since the question is silent regarding the above mentioned exceptions, we may assume that the establishment consists of different departments, undertakings, and branches and all such units are treated as part of same establishment for the purpose of computation of bonus.

- Hence, the employer's contention is not correct and the employees of all the three departments are entitled to bonus.

Q34. Bonus under Payment of Code on Wages, 2019 is payable to all the employees by the employer. State the correct position.

Answer

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



As per Section 26 of The Code on Wages, 2019, an employee who has worked for at least 30 days is entitled for bonus in the accounting year on such amount per mensem as prescribed.
As per Section 29 of The Code on Wages, 2019, notwithstanding anything contained in the Code, an employee shall be disqualified from receiving bonus under this Act if he is dismissed from service for:

- Fraud or
- Riotous or violent behaviour while on the premises of the establishment or
- Thefts miss appropriation or sabotage of any property of the establishment.

Q35. Mrs. Loreto drawing a salary of ₹9,500 who joined the Company on 20-01-2013, availed maternity leave from 08-02-2013 to 04-04-2013. Is she eligible for bonus for 2012-13?

Answer

As per Section 26 of The Code on Wages, 2019, an employee who has worked for at least 30 days is entitled for bonus in the accounting year on such amount per mensem as prescribed.

As per Section 28 of The Code on Wages, 2019, the days when an employee has been on maternity leave with salary or wages during the accounting year will be included in calculating the total working days for the purpose of payment of bonus.

In given case, the maternity leave period will be treated as working days.

Therefore, she is eligible for bonus for the year 2012-13 assuming she has worked for at least 30 days.

OBJECTIVES

Q1. Multiple Choice Question

1. The minimum rate of wages on time work basis may be fixed in accordance with
 - (a) by the hour; or
 - (b) by the day; or
 - (c) by the month
 - (d) all of the above
2. Section ____ deal with Eligibility for Bonus
 - (a) 6
 - (b) 8
 - (c) 18
 - (d) 26
3. Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to banet public servant within the meaning of section ____ of the Indian Penal Code.
 - (a) 15
 - (b) 18
 - (c) 21
 - (d) 26
4. Section 56 talks about the
 - (a) composition of offences
 - (b) offences by companies
 - (c) penalties for offences
 - (d) power of officers
5. Examine as to which of the following payments form part of "salary" under the provisions of the Code on Wages, 2019.
 - (a) Travelling allowance
 - (b) Commission on sales
 - (c) Dearness allowance
 - (d) Overtime allowance



6. Under Code on Wages, 2019, in disputed cases, bonus be paid:
- (a) Within 8 months from the close of the accounting year.
 - (b) Within 1 month from the date on which the award becomes enforceable.
 - (c) Within 2 months from the date on which the award becomes enforceable.
 - (d) Within 6 months from the date of closing of the accounting year.
7. Under Code on Wages, 2019, in any factory, in which 1200 persons are employed, wages must be paid:
- (a) Any time
 - (b) Before the expiry of 10th day of the following month
 - (c) Before the close of the month
 - (d) Before the expiry of 7th day of the following month
8. The term factory used in the Code on Wages, 2019, has the same meaning as in- _____
- (a) Industrial Dispute Act
 - (b) The Companies Act
 - (c) Equal Remuneration Act
 - (d) Section 20(m) of the Factories Act, 1948 -
9. Under The Code on Wages, 2019, deduction on account of payment to cooperative societies shall not be more than:
- (a) 50% of wages
 - (b) 75% of wages
 - (c) 90% of wages
 - (d) 60% of wages
10. XYZ Ltd. on which The Code on Wages, 2019, is applicable, fixes the wages period of 36 days. You as a Cost and Management Accountant of the Company, how would advise the company?
- (a) There is no problem in the above act of the Company
 - (b) As per Section 4(2) of the Act, no wage period can exceed 30 days. So the company would be advised accordingly.
 - (c) The wages period can be more than 30 days subject to approval of appropriate Government
 - (d) The company should take permission of Inspector of the factory.
11. In case of an employee who has not completed 15 years of age at the beginning of the accounting year, the minimum bonus will be:
- (a) ₹100 or 8.33% of salary or wages whichever is higher.
 - (b) ₹60 or 8.33% of salary or wages whichever is higher.
 - (c) ₹60 or 8.33% of salary or wages whichever is lower.
 - (d) ₹.33% of salary or wages.
12. The maximum limit of bonus payable to an employee is fixed by way of percentage of salary or wages earned by the employee during the accounting year, the percentage is:
- (a) 10%
 - (b) 15%
 - (c) 20%
 - (d) 25%
13. As per the Code on Wages, 2019, no fine can be imposed on a person under the age of _____.
- (a) 13 years
 - (b) 14 years
 - (c) 15 years
 - (d) 16 years
14. Every employee shall be entitled to receive bonus from his employer in an accounting year if he has worked for not less than:
- (a) 10 working days
 - (b) 20 working days
 - (c) 30 working days
 - (d) 40 working days
15. Every employee shall be entitled to receive bonus from his employer in:
- (a) A financial year
 - (b) An accounting year
 - (c) A calendar year
 - (d) A manufacturing year

QUESTION BANK



CA AKASH AGARWAL

CODE ON WAGES



16. As per the Code on Wages, 2019, adolescent means a person who has completed the age of 14 years but not completed the age of:

- (a) 15
- (b) 14
- (c) 21
- (d) 18

17. All payment of wages shall be made on:

- (a) A holiday
- (b) Weekend
- (c) A working day
- (d) Any day

18. Review of minimum wages is to be done at such interval not exceeding:

- (a) 10 years
- (b) 7 years
- (c) 3 years
- (d) 5 years

19. Section 55 on the Code on Wages, 2019 talks about

- (a) Offences by company
- (b) Composition of offences
- (c) Penalty for offences
- (d) Impacts of offences

Q2. True or False

1. Section 35 lays down provisions relating to calculation of direct tax payable by employee
2. The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding 6 years.
3. Section 9 lays down provisions relating to power of Central Government to fix floor wage.
4. Section 45 deals with claims under Code and procedure thereof
5. The Code of Wages, 2019 was enacted in 2020.
6. A part time employee engaged on regular basis is eligible for bonus under Code on Wages, 2019.

7. According to the Code on Wages, 2019 other deduction cannot be more than 50% of wages.

8. Any contract or agreement between the employer and employee whereby an employee either relinquishes or reduces his right to minimum wages or any privileges or concession is allowed under Code on Wages, 2019.

Q3. Fill in the Blanks

1. As per the bill, a committee of trade unions, employers and the state government will fix a for workers throughout the country
2. Any minimum rate of wages fixed or revised by the appropriate Government under section 8 may consist of a and an allowance at a rate to be adjusted.
3. Where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the _____
4. The appropriate Government may direct that the provision of Code on Act, 2019 will not be applicable in case of wages payable to a _____ person.
5. All wages payable under Code on Wages, 2019 is required to be paid in current coins or in _____ or both.
6. Wages should be paid before the expiry of _____ of the wage period in less than 1000 persons are employed.
7. Where a person provides labour or service to another for remuneration which is less than the minimum wage, such labour is called _____.
8. All payments of wages shall be made on a _____ day.
9. Where a person provides labour or service to another for remuneration which is less than the minimum wage, such labour is called _____.
10. Annual return under Code on Wages, 2019, shall be filed by every employer on or before _____.

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



ANSWERS

MCO	TRUE or FALSE	FILL UPS
1. D	1. True	1. Floor Wage,
2. D	2. False	2. Basic rate of wages
3. C	3. True	3. Minimum time rate
4. A	4. True	4. 4. Disabled
5. C	5. True	5. Currency notes
6. B	6. True	6. 7th day of succeeding month
7. B	7. True	7. Bonded/Forced labour
8. D	8. False	8. Working
9. B		9. Labour
10. B		10. 1st February every year
11. B		
12. C		
13. C		
14. C		
15. B		
16. D		
17. C		
18. D		
19. A		

BUSINESS ETHICS

PREVIOUS YEAR QUESTIONS & MQP & RTP

[PP. June 2019, Dec. 2021, MQP Dec 2023 & Dec 2024]

[6 Marks]

Q1. Write short note on Importance of ethics

Or

Discuss the importance of ethics.

Answer:

1. Ethics is a requirement for human life. It is our means of deciding a course of action. Without it, our actions would be random and aimless.
2. There would be no way to work towards a goal because there would be no way to pick between a limitless number of goals. Even with an ethical standard, we may be unable to pursue our goals with the possibility of success. To the degree which a rational ethical standard is taken, we are able to correctly organize our goals and actions to accomplish our most important values.
3. Any flaw in our ethics will reduce our ability to be successful in our endeavours.
4. A proper foundation of ethics requires a standard of value to which all goals and actions can be compared to.
5. This standard is our own lives, and the happiness which makes them liveable.
6. This is our ultimate standard of value, the goal in which an ethical man must always aim. It is arrived at by an examination of man's nature, and recognizing his peculiar needs. A system of ethics must further consist of not only emergency situations, but the day to day choices we make constantly.
7. It must include our relations to others, and recognize their importance not only to our physical survival, but to our well - being and happiness.
8. It must recognize that our lives are an end in themselves, and that sacrifice is not only not necessary, but destructive.

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



[PP. Dec 2019/ PP. July 2023]

[9 Marks]

Q2. What is Value Chain? What are the new themes and challenges that managers face currently?

Answer:

Value chain is a visualization of complete business as a sequence of activities in which usefulness is added to the products or services produced and sold by an organization.

Management accountants provide decision support for managers in each activity of value chain.

The design of management accounting system has to take into consideration the decision needs of the managers.

It has to take into consideration the new themes and challenges that manager's face currently also:

- Customer focus: The challenge for managers is to invest sufficient resources to enhance customer satisfaction. But every action of the organization has to result enhanced profitability or maintained profitability for the organization.
- Key Success Factors: These are non-financial factors which have an effect on the economic viability of the organization. Cost, quality, time and innovation are important key success factors. Management accounting systems need to have provisions for tracking the performance of the organization and its divisions as well as competitors on these success factors
- Continuous improvement: Continuous improvement or kaizen is a popular theme. Innovation related to this area in costing is kaizen costing.
- Value Chain and Supply Chain Analysis: Value chain as a strategic frame work for analysis of competitive advantage was promoted by Michael Porter. Management accountants have to become familiar with the framework and provide information to implement the framework by strategic planners.

[PP. Dec 2021]

[6 Marks]

Q3. Write a short note on: Types of ethics.

Answer:

There are 3 types of ethics:

- Meta ethics: Meta ethics deal with the nature of moral judgment. It looks at the origins and meanings of ethical principles.
- Normative ethics: Normative ethics is concerned with the content of moral judgments and the criteria for what is right or wrong.
- Applied ethics: Applied ethics looks at controversial topics like war, animal rights and capital punishment.

[PP. Dec. 2017 & Dec 2019]

[10 Marks]

Q4. Ethics are desirable for every business." Comment.

Or

Why a good understanding of business ethics is important?

Or

Why business ethics is more important and immensely needed in the present business environment? Discuss.

Or

Write short note on: Advantages of business ethics.

Or

State the needs for business ethics.

Answer

Need for Business Ethics: Business ethics is currently a very prominent business topic and the debates and dilemmas surrounding business ethics have attracted enormous amount of attention from different quarters of organizations and society. Hence, it has emerged as an increasingly important area of study.

Some of the major reasons why a good understanding of business ethics is important can be stated as follows:

- Stop business malpractices: Business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
- Improve customers' confidence: Business ethics are needed to improve the customers' confidence about the quality, quantity, price etc. of the products.
- Survival of business: Business ethics are mandatory for the survival of business. The businessmen who do not follow it will have short-term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman.
- Safeguarding consumers' rights: Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. Business ethics are must to safeguard the rights of the consumers.
- Protecting employees and shareholders: Business ethics protects employees and shareholders from exploitation through unfair trade practices.
- Develops good relations: Business ethics are important to develop good and friendly relations between business and society.
- Creates good image: Business ethics create a good image for the business and businessmen.
- Smooth functioning: If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will be all happy.

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



- **Consumer movement:** Business ethics are gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous businessmen by their false propaganda and false claims, unfair trade practices.
- **Consumer satisfaction:** Today the consumer is the king of the market. Any business simply cannot survive without the consumers. Therefore, the main aim or objective of business is consumer satisfaction.
- **Importance of labour:** Labour i.e. employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees.
- **Healthy competition:** The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. They must avoid monopoly. This is because a monopoly is harmful to the consumers.

[PP. Dec. 2014 & June 2016]

[7 Marks]

Q5. Explain Business ethics as professional ethics.

Or

What is business ethics?

Answer:

Business ethics is the study of business situations, activities and decisions where issues of right and wrong are addressed. The ethics of business is the ethics of responsibility. The businessman must promise that he will not harm knowingly.

Business ethics concerns itself with adhering to the social principles of the situations in which business takes place.

Just as a society functions on the social codes of conduct and a country is governed by its constitution, a business is run on corporate codes. In other words, there is a professional code of conduct for any business. These codes keep evolving as other things around evolve and develop.

Business Ethics (also called Corporate Ethics) is a form of applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment. It applies to all aspects of business conduct, and is relevant to the conduct of individuals and the entire organizations. It deals with morality in business environment. It involves moral judgment based on understanding of the society. It extends beyond the legal questions and involves moral judgment based on understanding of the society. It extends beyond the legal questions and involves goodness and badness of an act.

Therefore, not only should business be defined within the confines of ethics, but it should be practiced strictly under its own professional code of conduct. This distinction helps to orient the general principles of ethics and business to a particular activity. The principles, however, do not change.

Ethical behaviour is particularly important to professions and to business.

It matters to the professions because the complexity of what they do mean that there has to be trust by the user in what they do, or they have no purpose.

Deciding what is the right thing to do can be challenging. We all face numerous personal, social and organisational pressures which influence or decisions and actions.

Sometimes it is easy to assume that compliance with legislation, regulations and policies and procedures equates to doing the right thing. By its nature, a compliance approach to decision-making cannot cover all types of situations and eventualities. Even when a specific circumstance is addressed by a rule, compliance is often with the letter of the rule, not its spirit. What is needed is a principles-based approach to decision-making, which encourages deliberation, judgment and responsibility.

The character of a true professional remains undivided, whether at work or at home.

Our roles may change from time to time and from place to place but the integrity character should be maintained.

Business ethics, thus, professionally adheres to a code of conduct that is in accordance the normative principles.

Further, it may be concretely stated that professionals bear the following marked characteristics: Competency of educational qualification, Professional skills, and Compensation (salary/remuneration, etc.)

[PP. Dec 2022]

[10 Marks]

Q6. What are the areas of business ethics? Write a note of the same.

Answer:

Following are the areas of business ethics:

- Corporate Social Responsibility (CSR);
- Fiduciary responsibility to stake holders;
- Industrial espionage (a systematic way to use spies)

Ethical behaviour and CSR can bring significant benefits to a business as they may

- Attract customers to the firm's products, which mean boosting sales and profits. Customers are at ease buying products or services from a company they know to source their materials and labour in an ethical and responsible way.
- Make employees want to stay with the business, reduce labour turnover and therefore increase productivity. When working for a company with strong business ethics, employees are comfortable in the knowledge that they are not by their own action allowing unethical practices to continue. Attract more employees wanting to work for the business, reduce recruitment costs and enable the company to get the most talented employees.
- Attract investors and keep the company's share price high, thereby protecting the business from takeover. Knowing that the company, they deal with has stated their morals and made

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



a promise to work in an ethical and responsible manner allows investors' peace of mind that their money is being used in a way that arranges with their own moral standing

- A company which sets out to work within its own ethical guidelines is also less at risk of being fined for poor behaviour, and less likely to find themselves in breach of one of a large number of laws concerning required behaviour.

- Reputation is one of a company's most important assets, and one of the most difficult to rebuild should it be lost. Maintaining the promises it has made is crucial to maintaining that reputation.

Businesses not following any kind of ethical code or carrying out their social responsibility leads to wider consequences. Unethical behaviour may damage a firm's reputation and make it less appealing to stakeholders. This means that profits could fall as a result.

The natural world can be affected by a lack of business ethics. For example, a business which does not show care for where it disposes its waste products, or fails to take a long-term view when buying up land for development, is damaging the world in which every human being lives, and damaging the future prospects of all companies.

[PP, Dec 2023]

[7 Marks]

Q7. Analyze the different kinds of business ethics with reference to the application in decisions regarding employers, finance and trading.

Answer:

There are many kinds of business ethics. These may include personal responsibility, corporate responsibility, loyalty, respect, trustworthiness, fairness, community and environmental responsibility

- 1) Personal responsibility: Each person who works for a business, whether on the executive level or the entry-level, will be expected to show personal responsibility. This could mean completing tasks your manager has assigned to you, or simply fulfilling the duties of your job description. If you make a mistake, you acknowledge your fault and do whatever you need to do to fix it.
- 2) Corporate responsibility: Businesses have responsibilities to their employees, their clients or customers, and, in some cases, to their board of directors. Some of these may be contractual or legal obligations, others may be promises, for example, to conduct business fairly and to treat people with dignity and respect. Whatever those obligations are, the business has a responsibility to keep them.
- 3) Loyalty: Both businesses and their employees are expected to show loyalty. Employees should be loyal to their co-workers, managers, and the company. This might involve speaking positively about the business in public and only addressing personnel or corporate issues in private. Customer or client loyalty is important to a company not only to maintain good business relations but also to attract business through a good reputation.

- 4) Respect: Respect is an important business ethic, both in the way the business treats its clients, customers and employees, and also in the way its employees treat one another. When you show respect to someone, that person feels like a valued member of the team or an important customer. You care about their opinions, you keep your promises to them, and you work quickly to resolve any issues they may have.
- 5) Trustworthiness: A business cultivates trustworthiness with its clients, customers and employees through honesty, transparency and reliability. Employees should feel they can trust the business to keep to the terms of their employment. Clients and customers should be able to trust the business with their money, data, contractual obligations and confidential information. Being trustworthy encourages people to do business with you and helps you maintain a positive reputation.
- 6) Fairness: When a business exercises fairness, it applies the same standards for all employees regardless of rank. The same expectations with regard to honesty, integrity and responsibility placed upon the entry level employee also apply to the CEO. The business will treat its customers with equal respect, offering the same goods and services to all based on the same terms.
- 7) Community and Environmental Responsibility: Not only will businesses act ethically toward their clients, customers and employees, but also with regard to the community and the environment. Many companies look for ways to give back to their communities through volunteer work or financial investments. They will also adopt measures to reduce waste and promote a safe and healthy environment.

[PP, Dec 2023 & MQP Dec 2024]

[7 Marks]

Q8. Discuss four attributes commonly used in defining emotional intelligence & briefly state its importance

Or

Summarize the concept of emotional intelligence.

Answer:

Emotional intelligence also known as emotional quotient or EQ, is the ability to understand, use, and manage your own emotions in positive ways to relieve stress, communicate effectively, empathize with others, overcome challenges and defuse conflict. Emotional intelligence helps you build stronger relationships, succeed at school and work, and achieve your career and personal goals. It can also help you to connect with your feelings, turn intention into action, and make informed decisions about what matters most to you.

Emotional intelligence is commonly defined by four attributes

- Self-awareness - You recognize your own emotions and how they affect your thoughts and behaviour. You know your strengths and weaknesses, and have self-confidence.

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



- **Social awareness** You have empathy. You can understand the emotions, needs and concerns of other people, pick up on emotional cues, feel comfortable socially, and recognize the power dynamics in a group or organization.
 - **Relationship management** You know how to develop and maintain good relationships, communicate clearly, inspire and influence others, work well in a team, and manage conflict.
 - Emotional intelligence also known as emotional quotient or EQ, is the ability to understand, use, and manage your own emotions in positive ways to relieve stress, communicate effectively, empathize with others, overcome challenges and defuse conflict.
 - Your IQ can help you get into college, but it's your EQ that will help you manage the stress and emotions when facing your final exams. IQ and EQ exist in tandem and are most effective when they build off one another.
 - Emotional intelligence helps you build stronger relationships, succeed at school and work, and achieve your career and personal goals. It can also help you to connect with your feelings, turn intention into action and make informed decisions about what matters most to you.
 - **Emotional intelligence affects:**
 - **Performance:** Your performance at school or work: High emotional intelligence can help you navigate the social complexities of the workplace, lead and motivate others, and excel in your career. In fact, when it comes to gauging important job candidates, many companies now rate emotional intelligence as important as technical ability and employ EQ testing before hiring.
 - **Physical health:** If you're unable to manage your emotions, you are probably not managing your stress either. This can lead to serious health problems. Uncontrolled stress raises blood pressure, suppresses the immune system, increases the risk of heart attacks and strokes, contributes to infertility, and speeds up the aging process. The first step to improving emotional intelligence is to learn how to manage stress.
 - **Mental health:** Uncontrolled emotions and stress can also impact your mental health, making you vulnerable to anxiety and depression. If you are unable to understand, get comfortable with, or manage your emotions, you'll also struggle to form strong relationships. This in turn can leave you feeling lonely and isolated and further exacerbate any mental health problems
 - **Relationships:** By understanding your emotions and how to control them, you're better able to express how you feel and understand how others are feeling. This allows you to communicate more effectively and forge stronger relationships, both at work and in your personal life.
- As we know, it's not the smartest people who are the most successful or the most fulfilled in life. You probably know people who are academically brilliant and yet are socially inept and unsuccessful at work or in their personal relationships. Intellectual ability or your intelligence quotient (IQ) isn't enough on its own to achieve success in life. Yes, your IQ can help you get into college, but it's your EQ that will help you manage the stress and emotions when facing your final exams. IQ and EQ exist in tandem and are most effective when they build off one another.

[PP. July 2017 & Dec 2017]

[8 Marks]

Q9. What are the reasons for which unethical behaviour might arise in an organization?

Or

List out some of the examples of ethical issues faced by the employees in the work place.

Or

Explain the reasons for unethical behaviour among finance and accounting professionals.

Answer:

The reasons for unethical behaviour arise in the organization are:

- **Over Emphasis on Short Term Profitability:** Manipulating accounting entries to show better profitability (window dressing) to raise further capital from the market.
 - **Ignoring Small Unethical issues:** Companies need to develop an environment where small ethical lapses are taken seriously so that they do not recur in the future.
 - **Economic Cycles:** when the company is doing well, no one is bothered to understand its actual financial position. However, when the economy takes a downward turn, finance and accounting managers may take decisions by compromising over the established principles. To prevent disclosure of unethical problems in times of depression, companies need to be careful and vigilant also during prosperous time period.
 - **Market Complexity:** In the era of globalization and massive cross border flow of capital, accounting rules have become more complex. The complexity of principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behaviour.
 - **Money-Mindedness:** Most business organizations try to display better financial condition by window dressing: following such a principle towards "showing profits" rather than "earning profits" leads to unethical accounting and financial practices.
- Few other reasons are: Relationship with suppliers and business partners
- Bribery and immoral entertainment
 - Discrimination between suppliers
 - Dishonesty in making and keeping contracts
 - Relationship with customers
 - Unfair pricing Cheating customers
 - Dishonest advertising
 - Relationship with employees
 - Discrimination In hiring and treatment of employees
 - Management of resources
 - Misuse of organizational funds
 - Tax evasion

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CA AKASH AGARWAL

BUSINESS ETHICS



[PP. June 2014 & June 2016]

[7 Marks]

Q10. Discuss the code of ethics to be followed by Management Accountant professional.

Or

Discuss the important principles of Ethical Behaviour.

Or

What are the fundamental principles of ethical behaviour?

Answer:

Ans: The following are the fundamental principles of ethical behaviour:

- **Integrity:** The principle calls upon all accounting and finance professionals to adhere to honesty and firmness while discharging their respective professional duties. This principle therefore, encourages professionals to:
Avoid being involved in activities which would impair the goodwill of the organization.
Communicate adverse as well as favourable information with those concerned.
- **Objectivity:** This principle calls upon professionals to communicate information fairly and objectively in a transparent manner.
- **Confidentiality:** Under this principle, Accounting and Financial management should refrain from disclosing confidential information acquired during their work. Utmost care should be taken that ultimate confidentiality is maintained. Bartering such information is highly unethical and may prove detrimental to the interest of the company.
- **Professional Competence:** This principle calls for Finance and Accounting professionals to update their professional skills from time to time. It has to be ensured that the client or employer receives competent professional services based upon current and contemporary development in the related areas. Indian Accounting Standards are being brought at par with International Accounting Standards. Professional who does not keep pace with these developments will not be able to serve their companies and the society in an appropriate manner.
- **Obedience to Rules:** Accounting and Finance professionals should comply with relevant laws and regulations and avoid such actions which may result into discrediting the progression.

[PP. Dec 2016]

[8 Marks]

Q11. Explain the safeguards which may be created by business enterprise to overcome various threats faced by accounting & finance professionals.

Answer:

It is important to have safeguards created by the Finance and Accounting Profession, to entity or deter unethical behaviour. Such safeguards are to eliminate or reduce threats.

Safeguards created by the Finance and Accounting profession, Legislation or Regulation:

- Educational, training and experience requirements for entry into the profession
- Continuing professional development requirements.
- Corporate Governance Regulations.
- Professional standards.
- Professional or regulatory monitoring and disciplinary procedures.
- External review of reports by a legally empowered third party

Safeguards in the work environment:

- The employing organization's ethics and conduct programs.
- Employing competent staff.
- Strong internal controls

Appropriate disciplinary processes:

- Leadership for cultivating ethical behaviour to encourage employees to act in ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance.
- Timely communication of organization's policies and procedures.
- Employee training and education on policies and procedures.
- Encourage employees to communicate ethical issues without fear of retribution
- Organization's system of corporate overview

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



[PP. June 2017 & MQP Dec 2023 & Dec 2024]

[8 Marks]

Q12. What are the standards of ethical conduct for practitioners fixed by the ICAI?

Or

Interpret the standards of ethical conduct for practitioners fixed by The Institute of Cost Accountants of India.

Or

Analyse the standards of ethical conduct for a practicing Cost and Management Accountant fixed by the Institute of Cost Accountant of India.

Answer:

The Institute has promulgated (mentioned) the following standards of ethical conduct for practitioners-

- Maintain at all times independence of thought and action;
- Not to express an opinion on cost/financial reports or statements without first assessing her or his relationship with her or his client to determine whether such Member might expect her or his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts; and
- When preparing cost/financial reports or statements or expressing an opinion on cost/financial reports or statements, disclose all material facts known to such Member in order not to make such cost/financial reports or statements misleading, acquire sufficient information to warrant an expression of opinion and report all material misstatements or departures from generally accepted accounting principles.
- Not to disclose or use any confidential information concerning the affairs of such Member's employer or client unless acting in the course of his or her duties or except when such information is required to be disclosed in the course of any defence of himself or herself or any associate or employee in any lawsuit or other legal proceeding or against alleged professional misconduct by order of lawful authority or any committee of the Society in the proper exercise of their duties but only to the extent necessary for such purpose;
- Inform his or her employer or client of any business connections or interests of which such Member's employer or client would reasonably expect to be informed;
- Not, in the course of exercising his or her duties on behalf of such Member's employer or client, hold, receive, bargain for or acquire any fee, remuneration or benefit without such employer's or client's knowledge and consent; and
- Take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter;

- Conduct himself or herself toward other Members with courtesy and good faith;
- Not to accept any engagement to review the work of another Member for the same employer except with the knowledge of that Member, or except where the connection of that Member with the work has been terminated, unless the Member reviews the work of others as a normal part of his or her responsibilities;
- Not to attempt to gain an advantage over other Members by paying or accepting a commission in securing management accounting work;
- Not to act maliciously or in any other way which may adversely affect the public or professional reputation or business of another Member
- At all times maintain the standards of competence expressed by the Institute from time to time; undertake only such work as he or she is competent to perform by virtue of his or her training and experience and will, where it would be in the best interests of an employer or client, engage, or advise the employer or client to engage, other specialists.

[PP. Dec 2018, June 2024 & MQP. Dec 2023]

[7 Marks]

Q13. Discuss the nature and relevance of Ethics to the Business.

Or

Explain the nature of ethics and its importance in business

Answer:

Several factors play a role in the success of a company that is beyond the scope of financial statements alone.

Organizational culture, management philosophy and ethics in business each have an impact on how well a business performs in the long term. No matter the size, industry or level or profitability of an organization, business ethics are one of the most important aspects of long-term success.

The management team sets the tone for how the entire company runs on a day-to-day basis. When the prevailing management philosophy is based on ethical practices and behaviour, leaders within an organization can direct employees by example and guide them in making decisions that are not only beneficial to them as individuals, but also to the organization as a whole.

Building on a foundation of ethical behaviour helps create long lasting positive effects for a company, including the ability to attract and retain highly talented individuals and building and maintaining a positive reputation within the community.

Running a business in an ethical manner from the top down builds a stronger bond between individuals on the management team, further creating stability within the company.

When management is leading an organization in an ethical manner, employees follow in those footsteps. Employees make better decisions in less time with business ethics as a guiding principle; this increases productivity and overall employee morale.

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



When employees complete work in a way that is based on honesty and integrity, the whole organization benefits. Employees who work for a corporation that demands a high standard of business ethics in all facets of operations are more likely to perform their job duties at a higher level and are also more inclined to stay loyal to that organization. The importance of business ethics reaches far beyond employee loyalty and morale or the strength of a management team bond.

As with all business initiatives, the ethical operation of a company is directly related to profitability in both the short and long-term.

The reputation of a business from the surrounding community, other businesses and individual investors is paramount in determining whether a company is a worthwhile investment. If a company's reputation is less than perfect based on the perception that it does not operate ethically, investors are less inclined to buy stock or otherwise support its operations. With consistent ethical behaviour comes increasingly positive public image, and there are few other considerations as important to potential investors and current shareholders. To retain a positive image, businesses must be committed to operating on an ethical foundation as it relates to treatment of employees, respect to the surrounding environment and fair market practices in terms of price and consumer treatment.

[PP, Dec 2018 & Dec 2022, MTP June 2023]

[5 Marks]

Q14. Write short note on: Improving ethical behaviour in business.

Answer:

Understanding how people make ethical choices and what prompts a person to act unethically may reverse the current trend toward unethical behaviour in business. Ethical decisions in an organization are influenced by 3 key factors:

1. Individual moral standards,
2. The influence of managers and co-workers, and
3. The opportunity to engage in misconduct.

It is difficult for employees to determine what conduct is acceptable within a company if the firm does not have ethics policies and standards and without such policies and standards, employees may base decisions on how their peers and superiors behave.

Professional codes of ethics are formalized rules and standards that describe what a company expects of its employees.

Codes of ethics, policies on ethics, and ethics training programs advance ethical behaviour because they prescribe which activities are acceptable and which are not, and they limit the opportunity for misconduct by providing punishments for violations of the rules and standards. The enforcement of such codes and policies through rewards and punishments increases the acceptance of ethical standards by employees.

[MQP Dec 2024]

[10 Marks]

Q15. Describe the role of management accounting in relation to the values and attitudes of Professional Accountants.

Answer:

The role of management accounting is also described as problem solving, score keeping and attention directing

- Problem solving: The role of accounting in problem solving is to provide information that is useful for evaluating alternatives.
- Scorekeeping: Scorekeeping records the results of various managerial actions and helps in assessing whether the results expected from the various actions are realized or not.
- Attention directing: The scorekeeping function in combination with expected results, and comparative analysis of scores of across various companies, divisions and departments, as well as comparative analysis of present period scores with previous periods, helps focus managerial attention on areas that require improvement.

Professional accountants take on a vast array of roles in businesses of all types, including the public sector, not-for-profit sector, regulatory or professional bodies, and academia. Their wide ranging work and experience find commonality in one aspect – their knowledge of accounting.

These individuals employ an inquiring mind to their work, based on their understanding of the company's financials. Their training in accounting enables them to adopt a pragmatic and objective approach to solving issues. This is a valuable asset to management, particularly in small and medium enterprises where the professional accountants are often the only professionally qualified members of staff. Cost management is an activity of managers related to planning and control of costs. Managers have to take decisions regarding use of materials, processes, product designs and have to plan costs or expenses to support the operating plan for their department or section. All these activities come under cost management. Information from accounting systems help managers in cost management activities. Cost management is not cost reduction alone. It is much broader. Cost management system has to ensure that a cost is incurred with the expectation of profit.

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



[MQP June 2024]

[7 Marks]

Q16. Explain what an internal code of ethics and its relevance in business.

Answer:

A code of ethics in business is a set of guiding principles intended to ensure a business and its employees act with honesty and integrity in all facets of its day-to-day operations and to only engage in acts that promote a benefit to society. All companies will have a different code of ethics with different areas of interest, based on the industry they are involved in, but the five areas that companies typically focus on include integrity, objectivity, professional competence, confidentiality, and professional behavior. Many firms and organizations have adopted a Code of Ethics.

According to the CFAI's website, Members of CFA Institute, including CFA, and candidates for the CFA designation must adhere to the following Code of Ethics:

Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.

Place the integrity of the investment profession and the interests of clients above their own personal interests.

Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.

Practice and encourage others to practice professionally and ethically that will reflect credit on themselves and the profession.

Promote the integrity and viability of the global capital markets for the ultimate benefit of society.

Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

[MQP June 2023 & Dec 2023]

[7 Marks]

Q17. Seven Principles of Public Life:

Answer:

The Committee submitted its first report in the year 1995 containing the seven principles of public life. The said principles have been amended over year. The seven principles of public life as amended up to and as on 2015 are as follows-

- Selflessness - Holders of public office should act solely in terms of the public interest.
- Integrity - Holders of public office must avoid placing themselves under any obligation to people or organizations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits

for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

- Objectivity - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- Accountability - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- Openness - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- Honesty - Holders of public office should be truthful.
- Leadership - Holders of public office should exhibit these principles in their own behavior. They should actively promote and robustly support the principles and be willing to challenge poor behavior wherever it occurs.

[MQP June 2023 & Dec 2023]

[7 Marks]

Q18. Recognition of ethical issues in business.

Answer: Learning to recognize ethical issues is the most important step in understanding business ethics. An ethical issue is an identifiable problem, situation, or opportunity that requires person to choose from among several actions that may be evaluated as right or wrong, ethi or unethical. In business, such a choice often involves weighing monetary profit against what a per considers appropriate conduct. The best way to judge the ethics of a decision is to look at a situation from a customer's or competitor's viewpoint.

Many business issues may seem straight forward and easy to resolve, but in reality, a person often needs several years of experience in business to understand what is acceptable or ethical. Ethics are also related to the culture in which a business operates.

[MQP June 2023 & Dec 2023]

[7 Marks]

Q19. State the evolution of ethics.

Answer: Social conduct has evolved along with the evolution of society. When our elders tell us 'Do not cheat' they are referring to a social code of conduct. Social conduct has developed in society over hundreds of years. The codes of conduct have been passed down from generation to generation, and there is a pattern to the evolution of such codes. Acceptable behaviour is promoted and elevated as a social value, and unacceptable behaviour is rejected and condemned. The laws of country are based on the customs or moral codes of its society. Penalties are prescribed for bad actions, actions that contradict the established laws. The laws are a measure against those people who cross the limits of the code of social conduct, and ensure that good

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



citizens are protected from the negative consequences of the law-breakers. The object of the social codes of conduct is to maintain, promote and elevate harmonious.

[PP DEC 2024]

[7 Marks]

Q20. Interpret the relationship between ethics and law.

Answer: Laws and ethics both serve similar purposes of guiding human conduct to make it conducive to civilized social existence. They enforce a sense of right and wrong. Laws refer to the set of codified norms which are enforced by the state. They act as external obligations. On the other hand, ethics refer to the set of norms which guide our internal compass and judgements. While laws apply uniformly to all, ethics can vary from person to person, and they change more frequently than laws. In case of a breach of law, the state is within its right to punish. Hence, they work as a medium of retributive justice. On the other hand, ethics are generally not enforceable. The relationship between laws and ethics is a complex one. Many laws are representative of ethics of the time and have been shaped by what is considered ethical. The idea that everyone is equal before law is derived from the value that human is born equal. At the same time, laws have shaped ethics. They have been used to counter regressive doctrines. From the above we can say that laws alone are not enough to promote ethical behaviour. Laws can never be so exhaustive to cover each and every scenario possible. Hence, there will always be scope for discretion. In such scenarios, ethical behaviour should come from within. There are many scenarios where laws cannot exist, as we cannot have strict laws to scrutinize every small act of corruption. Even with laws, some unethical practices continue to exist such as violence against women. Laws and ethics are equally important and go hand in hand.

EXTRA THEORY QUESTIONS

Q21. Consumer movement and Ethics

Answer: Business ethics is gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propaganda and false claims, unfair trade practices. Today, the consumers are aware of their rights and well informed as well as well organized. Now they are more organized and hence cannot be cheated easily. They take actions against those businessmen who indulge in bad business practices. They boycott poor quality, harmful, high priced and counterfeit goods. Therefore, the only way to survive in business is to be honest and fair. Consumer forum and consumer associations are more active and vocal now

Q22. Ethics is the first line of defence against corruption, while law enforcement is remedial and reactive. However, both fail to achieve the desired aim in the Indian set-up." Do you agree? Give reasons in support of your answer.

Answer: It is, absolutely correct to say that ethics is the first line of defense against corruption. What prevents corruption in the first place is ethics. The enforcement of law is a reaction to the occurrence of the corruption.

While the law can only lay down the do's and don'ts and the consequences of doing or not doing something.

The compliance to law in letter and spirit can be achieved only through ethical practices being followed.

An act may be perfectly legal but totally unethical. Therefore, the statement law enforcement is remedial and reactive is also true.

However, ethics is not absolute and is open to the influence of time, place and situation. Certain unethical practice on account of the fact that is widely prevalent is apparently justified.

The following are some of the factors that have contributed to the prevalence of corruption in India:

- Cultural ethos: Putting a premium on materialism, profiteering, power play and casual attitude for ethical values Myopic concern overriding long-term considerations and values.
- Institutional failures: Procedural formalities in-built obstacles, bureaucratic red-tapism etc.
- Poor enforcement of law: delay injustice.
- Erosion of values in politicians, entrepreneurs political lobbying etc

Q23. Consequences of Unethical behavior.

Answer:

Unethical behavior has adverse effects on business. Moreover, working for an unethical, deceptive, unfair or dishonest organization requires one to take unethical or compromised decisions which also take a toll on physical, mental and emotional health of individuals. Unethical behavior has a few consequences, as follows:

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CA AKASH AGARWAL

BUSINESS ETHICS



Firstly, if a company is unethical, the word spreads fast, and the reputation and goodwill of the company is at stake. Such impact can be of a permanent nature destroying the company's reputation possibly forever.

Secondly, unethical behaviour can also have a detrimental impact on the productivity of a company due to mistrust and lack of faith among the employees.

Thirdly, unethical behavior can, not only cause a company to lose good and valuable employees, but also it can be quite difficult to find new employees.

Moreover, indulgence in unethical behavior shall not only be instrumental in expediting the cost of training of new employees in terms of money, but also loss of valuable time which could be spent in production. Such disruptions or slowing down of production will result in greater customer dissatisfaction and fewer new customers. It is proved that good ethics carries many benefits, and its violations – penalties, and therefore refraining from unethical behavior should be the sine-qua-non consideration for an organization

Q24. Fairness and honesty are the pillars of success in business". Comment

Answer:

The success of the business depends very much on fairness and honesty in the business. Fairness and honesty are at the heart of the business ethics and relate to the general values of decision makers. At a minimum, business professionals and persons are expected to follow all applicable laws and regulation. Even then, they are expected not to harm customers, employees, clients or competitors knowingly through deception, misrepresentation, coercion or discrimination. One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. Another aspect of fairness relates to competition. Although numerous laws have been passed to foster competition and make monopolistic practices illegal, companies sometimes gain control over markets by using questionable practices that harm competition.

Rivals of Microsoft, for example, accused the software giants of using unfair and monopolistic practices to maintain market dominance with its Internet explorer browser.

These aforesaid examples show that fairness and honesty pay in the long run; they secure the stability of the business and overall reputation in the business world. Therefore we may say that fairness and honesty are the pillars of success in the business.

Q25. Corporate Governance and Corporate fairness are inter-related. Comment

Answer:

Corporate governance is about promoting corporate fairness, transparency and accountability. It is concerned with structures and processes for decision- making, accountability, control and behavior at the top level of organizations. It influences how the objectives of an organisation are set and achieved, how risk is monitored and assessed and how performance is optimized.

The term governance relates to a process of decision making and implementing the decisions in the interest of all stakeholders. It basically relates to enhancement of corporate performance and

ensures proper accountability for management in the interest of all stakeholders. It is a system through which an organisation is guided and directed.

Benefits of goods Corporate Governance:

1. Protection of investor interests and strong capital markets

2. Good governance is rewarded with a higher market valuation.

3. Ensure commitment of the board in managing the company in a transparent manner.

Thus corporate Governance can also be defined as the formal system of accountability and control for ethical and socially responsible organizational decisions and use of resources.

Corporate governance arrangements are key determinants of an organization's relationship with the world

Q26. Healthy competition and Protecting Consumer Interest are a part of Business Ethics.

Comment.

Answer:

Healthy Competition and Protecting Consumer's Interest:

Competition means rivalry in the marketplace, which is regulated by a set of policies and laws to achieve the goals of economic efficiency and consumer welfare, and to check on the concentration of economic power. All these goals have an interactive relationship and, when in harmony, deliver total welfare. Indeed, it is the consumers who are supposedly the biggest beneficiaries of competition.

At the macro level, the design and implementation of a competition policy promotes the advancement and increased welfare of the poor. At the micro level, an effective competition regime or consumer law (covering competition distortions) can prevent consumer abuses, both at industry level as well as in a village or locality where one shopkeeper can cheat the whole community.

An appropriate and dynamic competition policy and law are imperative to support the economic development, control the corruption, reduce wastage and arbitrariness, improve competitiveness and provide relief to the poor. An efficient implementation of Business ethics would promote both Healthy competition and protect consumer interests

Q27. What is meant by Conflicts Resolution Process? What steps should be taken to resolve the conflict issues.

Answer:

A finance and accounting professional should determine the appropriate course of action and weigh the consequences of each possible course of action. If the matter remains unresolved, the professional should consult with other appropriate persons within the firm and if required, with persons responsible for governance of the organisation (e.g. Board of Directors).

The following steps are suggested to resolve the issues:

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



- (a) **Documentation:** He should document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.
- (b) **Legal Advice:** If a significant conflict cannot be resolved, a professional may obtain advice from the relevant professional body or legal advisors without breach of confidentiality.
- (c) **Withdrawal:** If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional should, where possible, refuse to remain associated with the matter creating the conflict, withdraw from the engagement team or specific assignment or resign from the employing organization

OBJECTIVES

Q1. Multiple Choice Question

1. The relationship between laws and ethics is:

- a) Complex
- b) Simple
- c) Inexplicable
- d) None of the above

2. Many laws are ____ to ethics of time

- a) Complimentary
- b) Supplementary
- c) Representative
- d) None of the above

3. Law gives us a certain right because all humans are born ____:

- a) Equal
- b) Unequal
- c) Subordinate
- d) None of the above

4. The role of accounting in problem solving is to provide information useful in ____ alternatives:

- a) finding
- b) Evaluating
- c) dismissing
- d) None of the above

5. Ethics are the set of moral principles that guide a person's:

- a) Behaviour
- b) Philosophy
- c) Religion
- d) Profession

6. The following is the disadvantage of business ethics:

- a) Through increasing morale and trust business can increase their market share
- b) Publicity due to well and ethical performance
- c) Acceptance of products of the company by the public
- d) Diversity in achievements

7. Business ethics are gaining importance because of:

- a) Smooth functioning
- b) Good image

QUESTION BANK

CA AKASH AGARWAL

BUSINESS ETHICS

- c) The growth of consumer movement
- d) Increasing profit

8. Which of the following statement is correct about business ethics?

- a) Social responsibility and business ethics are considered different concepts
- b) Making higher profits should be the main objective of a business
- c) A business may sustain only if it cares for society
- d) Companies making ethical investments may not be able to compete

9. Business ethics is based on well accepted:

- a) Moral and Social Values
- b) Social Values only
- c) Moral Values only
- d) None of the above

10. The crucial step in understanding business ethics is:

- a) Establishing codes of ethics
- b) Learning to recognize ethical issues
- c) Having efficient operations
- d) Implementing strategic plan

11. The study of ethics can be divided into four operational areas namely meta ethics, normative ethics, descriptive ethics and:

- a) Positive ethics
- b) Physical ethics
- c) Applied ethics
- d) Natural ethics

12. A proper foundation of ethics requires a standard of _____ to which all goals and actions can be compared to.

- a) Value
- b) Living
- c) Life
- d) Speech

13. Ethics are the set of moral principles that guide a person's

- a) Behaviour
- b) Philosophy
- c) Religion
- d) Profession

14. Business ethics call for avoidance of

- a) Self-interest
- b) Competition
- c) Monopoly
- d) Publicity

15. Selflessness means that the holders of public office should act terms of the solely in the

- a) Government interest
- b) Public interest
- c) Company interest
- d) All of the above

16. A proper foundation of ethics requires a standard of & actions can be compared to. to which all goals

- a) Value
- b) Living
- c) Life
- d) Speech

17. Moral management requires ethical:

- a) Customer
- b) Market
- c) Leadership
- d) Producer

18. Which one of the following is not an attribute of emotional intelligence?

- a) Self-management
- b) Social awareness
- c) Corporate management
- d) Relationship management

19. Holders of public office should take decision solely in terms of the public interest. This principle of public life is called:

- a) Integrity
- b) Accountability
- c) Honesty
- d) Selflessness

20. Out of 7 principles of public life, the principle of objectivity means:

- a) Holders of public office should take decisions solely in terms of the public interest.

QUESTION BANK



CA AKASH AGARWAL

BUSINESS ETHICS



- b) In carrying public out public business including making public appointments, holders office of should make choices on merit.
c) Holders of public office are accountable for their decision and actions to the public.
d) Holders of public office should be as open as possible about all the decisions actions that they take.
21. Holders of public office should not place other themselves under any financial or obligation to outside individuals or organizations that might influence them in the performance or their official duties. This principle of public life is called _____
a) Selflessness
b) Honesty
c) Objectivity
d) Integrity
22. The 7 principles of public life were set out by lord Nolan for the 1st time in:
a) 1975
b) 1985
c) 1995
d) 1999
23. Which one of the following is not an attribute of emotional intelligence?
a) Self management
b) Social awareness
c) Corporate management
d) Relation management
24. Which of the following reason is applicable for unethical business practices?
a) Workplace Surveillance
b) Profit making by some of the big companies
c) Success of the company
d) Administrative corruption
25. The following is the disadvantage of business ethics:
a) Through increasing morale and trust business can increase their market share
b) Publicity due to well and ethical performance
c) Acceptance of products of the company by the public
d) Diversity in achievements
26. To resolve the Ethical Conflict, following should not be considered :
a) Relevant facts
b) Alternative Course of action
c) Arms-Length
d) Ethical issues involved
27. Value chain as a strategic framework for analysis of competitive advantaged was promoted by:
a) Peter Drucker
b) F. W. Taylor
c) Michael Porter
d) Tom Peters
28. When a professional promotes a position or opinion to such extent that some objectivity may have to be compromised, this threat is known as
a) Familiarity threat
b) Objectivity threat
c) Advocacy threat
d) Intimidation threat
29. Which of the following threat may not affect the business environment and influence finance and accounting professionals?
a) Self actualization
b) Self Interest
c) Advocacy
d) Self Review
30. It is uncommon for business to behave ethically because:
a) It has to meet stockholder expectations.
b) It has to ignore their employees' relations.
c) To build trust with shareholders.
d) All of the above
31. There are many types of ethical conflicts in the:
a) Business place
b) Office place
c) Work place
d) Public place
32. Which one of the following is said to be "unethical behaviour"?
a) Encouraging communication
b) Economic cycles
c) Employees awareness
d) Objectivity

QUESTION BANK

CA AKASH AGARWAL

BUSINESS ETHICS

33. Business Ethics also called as Corporate Ethics is a form of:

- a) Positive Ethics
- b) Applied Ethics
- c) Physical Ethics
- d) Practical Ethics

34. Business ethics calls for avoidance of:

- a) Competition
- b) Publicity
- c) Monopoly
- d) Self-interest

35. Business ethics has an _____ application.

- a) Universal
- b) Natural
- c) Practical
- d) Physical

36. The phrases 'business ethics and corporate ethics' are often used to describe the application of ethical values to:

- a) Business activities
- b) Make businessman spiritual
- c) Nation Building
- d) Democratize corporate

37. Which one of the following is not a feature of business ethics?

- a) Code of conduct
- b) Provide protection to social group
- c) Provide basic framework
- d) Profit making

Q2. True or False

- 1. The term ethics is derived from latin word 'Ethos'.
- 2. Ethics is a requirement for human life.
- 3. The businessmen who do not follow business ethics will have short term success, but they will fail in the long run.
- 4. Ethics, in the practical sense, is also known as moral action and is an applied discipline.
- 5. Meta ethics deal with the nature of Moral Judgement.
- 6. Ethics, in the practical sense, is also known as moral action and is an applied discipline.
- 7. The term 'ethics' derived from French word 'ethos' which means character.

8. Ethics is requirement for human life.

9. Ethics and Law have the same purpose.

10. High ethical performance also protects the individuals who work in business.

11. Value chain as a strategic framework for analysis of competitive advantage was promoted by Peter Drucker.

12. The businessmen who do not follow business ethics will have short term success, but they will fail in the long run.

13. Public expects business to exhibit high level of ethical performance & social responsibility

Q3. Fill in the blanks

- 1. Selflessness means that the holders of public office should act solely in terms of the _____.
- 2. Integrity means that the holders of _____ must avoid placing themselves under any obligation to people.
- 3. Accountability means that the holders of public office are accountable to the public for their decisions and actions and must submit themselves to the _____ necessary to ensure this.
- 4. Openness means that the holders of public office should act and take decisions in an open and _____ manner.
- 5. Objectivity means that the holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or _____.
- 6. The word ethics stems from the Greek word _____.
- 7. Ethics are set of normal principles that guide a person's _____.
- 8. The ethical operation of the company is directly related to _____ in both short and long term.
- 9. The 7 principles of _____ were set out by Lord Nolan in 1995.
- 10. The 7 principles of public life were set out by _____.
- 11. The ethical operation of a company is directly related to _____ in both short and long term.
- 12. Business ethics must safeguard different rights of the _____.
- 13. _____ is the principles and standards that determine acceptable conduct in business organizations.
- 14. A proper foundation of ethics requires a standard of to which all goals and actions can be compared to _____.
- 15. A _____ arise where the professional have to decide between compliance with principles and actions which are beneficial to the business organisations at large.
- 16. Like other professionals, accountants also face ethical _____.