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**CA FOUNDATION
PORTIONWISE TEST
ROUND – 1 BUSINESS**

LAW

SUGGESTED ANSWER



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Question 1 (A):

(4 Marks)

Solution:-

(i) Supreme Court

The Supreme Court is the apex body of the judiciary. It was established on 26th January 1950. The Chief Justice of India is the highest authority appointed under Article 126. The principal bench of the Supreme Court consists of seven members including the Chief Justice of India. Presently, the number has increased to 34 including the Chief Justice of India due to the rise in the number of cases and workload. An individual can seek relief in the Supreme Court by filing a writ petition under Article 32.

(ii) High Court

The highest court of appeal in each state and union territory is the High Court. Article 214 of the Indian Constitution states that there must be a High Court in each state. The High Court has appellate, original jurisdiction, and Supervisory jurisdiction. However, Article 227 of the Indian Constitution limits a High Court's supervisory power. In India, there are twenty-five High Courts, one for each state and union territory, and one for each state and union territory. Six states share a single High Court. An individual can seek remedies against violation of fundamental rights in High Court by filing a writ under Article 226.

Question 1 (B):

(6Marks)

Solution:-

Distinction between Limited Liability Partnership (LLP) and Limited Liability Company (LLC)

S. No.	Basis	Limited Liability Partnership (LLP)	Limited Liability Company (LLC)
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	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.
3.	Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013) read with its Memorandum of Association and Articles of Association.
4.	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.
5.	No. of members/partners	Minimum – 2 partners Maximum – No such limit on the partners in the Act. The partners 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. Members can be organizations, trusts, another business form or individuals.
6.	Liability of members/partners	Liability of a partners is limited to the extent of agreed contribution.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the LLP managed by the partners	The affairs of the company are managed by board of directors elected by the shareholders.

		including the designated partners authorized in the agreement.	
8.	Minimum number of directors/designated partners	2 designated partners.	Pvt. Co. – 2 directors Public Co. – 3 directors

Question 2 (A):

(7 Marks)

Solution:-

- (a) **No**, this is a case of partnership because no mutual agency relationship exist among X and Y.
- (b) **Yes**, this is a case of partnership because there is an agreement between two firms to combine into one firm.
- (c) **Yes**. This is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.
- (d) **No**, this is not a case of partnership as no charitable association can be floated in partnership.
- (e) **No**, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.
- (f) **Yes**, this is a case of partnership as there exist the element of doing business and sharing of profits equally.
- (g) **No**, this is not a case of partnership as there is no intention to carry on the business and to share the profits thereof.

Question 2 (B)

(7 Marks)

Solution:-

Meaning of Law: Law is a set of obligations and duties imposed by the government for securing welfare and providing justice to society. India's legal framework reflects the social, political, economic, and cultural aspects of our vast and diversified country.

The Process of Making a Law

- When a law is proposed in parliament it is called a Bill.

- After discussion and debate, the law is passed in Lok Sabha.
- Thereafter, it has to be passed in Rajya Sabha.
- It then has to obtain the assent of the President of India.
- Finally, the law will be notified by the Government in the publication called the Official Gazette of India.
- The law will become applicable from the date mentioned in the notification as the effective date.
- Once it is notified and effective, it is called an Act of Parliament.

Question 3 (A):

(7 Marks)

Solution:-

Expulsion of partner and factors to be kept in mind:

As per Section 33 of the Indian Partnership Act, 1932, a partner may not be expelled from a firm except

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm and shall be null and void.

The test of good faith as required under Section 33(1) includes three things:

- (i) The expulsion must be in the interest of the partnership
- (ii) The partner to be expelled is served with a notice
- (iii) He is given an opportunity of being heard.

Yes, a partner may be expelled by other partners strictly in compliance with the provisions of section 33.

Question 3 (B):

(3Marks)

Solution:-

- (i) **Ministry of Corporate Affairs (MCA):** MCA is an Indian Government Ministry which primarily concerned with administration of the Companies Act, 2013, the Companies Act, 1956, the Limited Liability Partnership Act, 2008, and the Insolvency and Bankruptcy Code, 2016. It is responsible mainly for the regulation of Indian enterprises in the industrial and services sector.

The Ministry is mostly run by civil servants of the ICLS cadre. These officers are elected through the Civil Services Examination conducted by Union Public Service Commission.

The highest post, Director General of Corporate Affairs (DGCoA), is fixed at Apex Scale for the ICLS.

- (ii) **Ministry of Home Affairs:** It is a ministry of the Government of India. As an interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy. The Home Ministry is headed by Union Minister of Home Affairs.

Question 4 (A):

(6 Marks)

Solution:-

(i) 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.

(ii) Effects of insolvency of a partner (Section 34 of the Indian Partnership Act, 1932):

- (i) The insolvent partner cannot be continued as a partner.
- (ii) He will be ceased to be a partner from the very date on which the order of adjudication is made.
- (iii) The estate of the insolvent partner is not liable for the acts of the firm done after the date of order of adjudication.

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- (iv) The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication,
- (v) 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.

Question 4 (B):

(4 Marks)

Solution:-

Designated Partner [Section 2(1)(j) of the LLP Act, 2008]: “Designated partner” means any partner designated as such pursuant to section 7.

According to section 7 of the LLP Act, 2008:

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) If in LLP, 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 LLP or nominees of such bodies corporate shall act as designated partners.
- (iii) Resident in India: For the purposes of this section, the term “resident in India” means a person who has stayed in India for a period of not less than 120 days during the financial year.

Question 5 (A):

(6 Marks)

Solution:-

(i) The Securities and Exchange Board of India (SEBI):

- It is the regulatory body
- for securities and commodity market in India
- under the ownership of Ministry of Finance within the Government of India.
- It was established on 12 April, 1988 as an executive body and was given statutory powers on 30 January, 1992 through the SEBI Act, 1992.

(ii) Reserve Bank of India (RBI):

- It is India's Central Bank and regulatory body responsible for regulation of the Indian banking system.
- It is under the ownership of Ministry of Finance, Government of India.
- It is responsible for the control, issue and maintaining supply of the Indian rupee.
- It also manages the country's main payment systems and works to promote its

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economic development.

- Bharatiya Reserve Bank Note Mudran (BRBNM) is a specialised division of RBI through which it prints and mints Indian currency notes (INR) in two of its currency printing presses located in Nashik (Western India) and Dewas (Central India).
- RBI established the National Payments Corporation of India as one of its specialised division to regulate the payment and settlement systems in India.
- Deposit Insurance and Credit Guarantee Corporation was established by RBI as one of its specialised division for the purpose of providing insurance of deposits and guaranteeing of credit facilities to all Indian banks.

(iii) Insolvency and Bankruptcy Board of India (IBBI)-

- It is the regulator for overseeing insolvency proceedings and entities like Insolvency Professional Agencies (IPA), Insolvency Professionals (IP) and Information Utilities (IU) in India.
- It was established on 1 October 2016 and given statutory powers through the Insolvency and Bankruptcy Code, which was passed by Lok Sabha on 5th May 2016.
- It covers Individuals, Companies, Limited Liability, Partnerships and Partnership firms. The new code will speed up the resolution process for stressed assets in the country.
- It attempts to simplify the process of insolvency and bankruptcy proceedings.
- It handles the cases using two tribunals like NCLT (National Company Law Tribunal) and Debt Recovery Tribunal.

Question 5 (B):

(4 Marks)

Solution:-

Section 40 of the Indian Partnership Act, 1932, gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

Also, according to section 44, the Court may, at the suit of a partner, may dissolve a firm on various grounds including where the business of the firm cannot be carried on except at a loss (in future also).

In the instant case, P wants to continue the partnership business despite the losses incurred over the past four years and Q and R are reluctant to continue operating the business due to continuous losses.

Here, P can insist on continuing the business if the partnership agreement does not specifically provide such a right to one or more partner / partners since Section 40 specifies that with the consent of all the partners or in accordance with a contract between the partners the firm can be dissolved.

Options available to Q and R

(8)

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Mutual Agreement to Dissolve the Partnership: Q and R can propose to P that the partnership be dissolved by mutual agreement. If P agrees, the partnership can be dissolved amicably.

Dissolution by the Court: If P does not agree to dissolve the partnership mutually, Q and R can approach the court for an order under Section 44.



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If any query please Whatsapp on: 9130039454 / 9130039455.

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