

CA Foundation Course
DATE: 03.04.2025

MAXIMUM MARKS: 100

(Mock Test Paper – Series : 1)
TIMING: 3^{1/4} Hours

PAPER 2 : BUSINESS LAW

Question No. 1 is Compulsory.

Answer any four question from the remaining five questions.

Wherever necessary, suitable assumptions should be made and disclosed by way of note forming part of the answer. Working Notes should form part of the answer.

Answer 1:

- (a) Legal Provision:** 'Holding and subsidiary' companies are relative terms. A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)] of Companies Act, 2013. {1 M}
- For the purposes of this clause, the expression "company" includes any body corporate.
- Whereas section 2(87) of Companies Act, 2013 defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company— {1 M}
- (i) controls the composition of the Board of Directors; or
 - (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies: {2 M}
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
- For the purposes of this section —
- (I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
 - (II) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; {1/2 M Each}
 - (III) the expression "company" includes anybody corporate;
 - (IV) "layer" in relation to a holding company means its subsidiary or subsidiaries.
- Conclusion:**
- (i) Sarvesh Private Ltd. is subsidiary of Mohan Private Ltd. as holding is more than 50% of share capital.
 - (ii) It Nathuram Private Ltd. hold 1,60,000 share in Sarvesh Private Ltd. than yes Nathuram Private Ltd. is holding of Sarvesh Private Ltd. and since Mohan Private Ltd. is holding of Nathuram Private Ltd. so it automatically holding of Sarvesh Private Ltd. also. {1/2 M Each}

Answer:

- (b) (i) Provision :** Rights of outgoing partner to carry competing business under section 36. {2^{1/2} M}
- An outgoing partner may carry on business competing with that of firm and may advertise such business but subject to contract to contrary, But he may not-
- (a) use firm name,
 - (b) represent himself as carrying on business of firm,
 - (c) Solicit the customer who were dealing with the firm before he ceased to be partner.

- Conclusion :** So applying above provision P and Q can start a competitive business if there is no contract to contrary following the above restriction. {1 M}
- (ii) **Provision :** Sec. 37 of Indian Partnership Act 1932 provides that where a partner dies a ceases to be a partner and the surviving a continuing partner carry on the business of the firm with the property of the firm without any final settlement of accounts between them and the outgoing partner in the absence of contract to contrary the outgoing partner or his estate is entitled at the option of himself or his representative to such share of profit made since he ceased to be partner as may be attributable to the use of his share of the property of firm or to interest at the rate six percent per annum on the amount of his share in the property of the firm. {2^{1/2} M}
- Conclusion :** Applying the above provision P and Q can ask their share of profit made since they ceased to be partner or 6% p.a. interest on their share from M/S PQRS & Com, which ever is beneficial to them. {1 M}

Answer:

- (c) **Doctrine of Privity of Contract:**
- There is a concept regarding consideration is that 'there can be the stranger to consideration but there cannot be the stranger to contract'. i.e. consideration may proceed or can be given by third party but the third party cannot sue on agreement and only a person who is party to a contract can sue on it. {1^{1/2} M}
- The above rule i.e. there can be the stranger to consideration but there cannot be stranger to contract is known as doctrine of privity of contract.
- Exceptions of the rule that there can be the stranger to consideration but there cannot be the stranger to contract:** i.e. in following cases even a stranger to a contract i.e. a person who is not the party of the contract may enforce the contract: {1 M}
- (i) **In the case of trust:** A beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
 - (ii) **In the case of Family Settlement:** If the terms of the settlement are reduced in writing then the members who are not the parties to the settlement may enforce an agreement.
 - (iii) **In the case of marriage contract:** A female can enforce a provision for marriage expenses based on partition of HUF.
 - (iv) **In the case of Assignment of Contract:** When benefit under a contract has been assigned then the assignee can enforce the contract.
Example: A nominee can claim the amount or insurance policy though he is not the party of a contract. {1/2 M Each}
 - (v) **In the case of an estoppel by acknowledgement of liability:** Where a person by his word or conduct acknowledge or admit himself as an agent of third party then he is liable towards third party though he is not a party to contract.
 - (vi) **In the case of covenant running with the land:** When a person purchase a land with a notice that the original owner is bound by certain duties regarding the land then the successor of the seller is also liable to bound by certain duties.
 - (vii) **Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent where the agent has acted within scope of his authority and with the name of the principal.

Answer 2:

- (a) (i) Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiesce in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties. {1^{1/2} M}
- Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.
- Therefore, in the instant case,
- (i) Since, Sheena could not perform as per the terms of contract, Laxmi Vidya Mandir can terminate the contract.
- (ii) In the second situation, the management of Laxmi Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently. {1/2 M Each}
- (iii) Laxmi Vidya Mandir can claim damages that it has suffered because of this breach in part (i) & Part (ii).

Answer:

- (a) (ii) **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 from 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 promisors, 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 any one or more of the joint promisors to perform the whole of the promise. {2^{1/2} M}
- 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 contract). 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,
- (i) Y can recover the contribution from X and Z because XYZ are joint promisors.
- (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him. {1/2 M Each}
- (iii) 'Y' also can recover the contribution from Z's assets.

Answer:

- (b) 1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only. {1 M Each for Any Seven Points}

7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

Answer:

- (c) The laws in the Indian legal system could be broadly classified as follows:

Criminal Law

Criminal law is concerned with laws pertaining to violations of the rule of law or public wrongs and punishment of the same. Criminal Law is governed under the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973 (Crpc). The Indian Penal Code, 1860, defines the crime, its nature, and punishments whereas the Criminal Procedure Code, 1973, defines exhaustive procedure for executing the punishments of the crimes.

{1^{1/2} M}

Murder, rape, theft, fraud, cheating and assault are some examples of criminal offences under the law.

Civil Law

Matters of disputes between individuals or organisations are dealt with under Civil Law. Civil courts enforce the violation of certain rights and obligations through the institution of a civil suit. Civil law primarily focuses on dispute resolution rather than punishment. The act of process and the administration of civil law are governed by the Code of Civil Procedure, 1908 (CPC). Civil law can be further classified into Law of Contract, Family Law, Property Law, and Law of Tort.

{1^{1/2} M}

Some examples of civil offences are breach of contract, non-delivery of goods, non-payment of dues to lender or seller defamation, breach of contract, and disputes between landlord and tenant.

Common Law

A judicial precedent or a case law is common law. A judgment delivered by the Supreme Court will be binding upon the courts within the territory of India under Article 141 of the Indian Constitution. The doctrine of Stare Decisis is the principle supporting common law. It is a Latin phrase that means "to stand by that which is decided." The doctrine of Stare Decisis reinforces the obligation of courts to follow the same principle or judgement established by previous decisions while ruling a case where the facts are similar or "on all four legs" with the earlier decision.

{1^{1/2} M}**Principles of Natural Justice**

Natural justice, often known as Jus Natural deals with certain fundamental principles of justice going beyond written law. Nemo iudex in causa sua (Literally meaning "No one should be made a judge in his own cause, and it's a Rule against Prejudice), audi alteram partem (Literally meaning "hear the other party or give the other party a fair hearing), and reasoned decision are the rules of Natural Justice. A judgement can override or alter a common law, but it cannot override or change the statute.

{1^{1/2} M}**Answer 3:**

- (a) (i) It is an implied contract and A must pay for the services of the coolie detailed by him. {1/2 M}
- Implied Contracts: Implied contracts come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. {1/2 M}
- (ii) Obligation of finder of lost goods to return them to the true owner cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts. {1/2 M}

- Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties. {1/2 M}
- (iii) The above contract is a void contract. {1/2 M}
- Void Contract: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus, a void contract is one which cannot be enforced by a court of law. {1/2 M}

Answer:

- (b) (i) 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. {2 M}
- In the given case, MU (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. {1 M}

Answer:

- (b) (ii)

PARTNERSHIP V/S CLUB

Basis of difference	Partnership	Club
Definition	It is an association of persons formed for earning profits from a business carried on by all or any one of them acting for all.	A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members, etc.
Relationship	Persons forming a partnership are called partners and a partner is an agent for other partners.	Persons forming a club are called members. A member of a club is not the agent of other members.
Interest in the property	Partner has interest in the property of the firm.	A member of a club has no interest in the property of the club.
Dissolution	A change in the partners of the firm affect its existence.	A change in the membership of a club does not affect its existence.

{1 M Each}

Answer:

- (c) (i) **Guarantee may be classified under two categories:**
- A. **Specific Guarantee-** A guarantee which extends to a single debt/specific transaction is called a specific guarantee. The surety's liability comes to an end when the guaranteed debt is duly discharged or the promise is duly performed. {1 1/2 M}
- B. **Continuing Guarantee [Section 129] -** A guarantee which extends to a series of transaction is called a continuing guarantee. A surety's liability continues until the revocation of the guarantee. {1 1/2 M}
- The essence of continuing guarantee is that it applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.

Answer:**(c) (ii)**

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of party/ parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties- creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and unconditional.	The liability of the surety is secondary and conditional as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	The liability arises only on the non-performance of an existing promise or non-payment of an existing debt.
Time to Act	The indemnifier need not act at the request of indemnity holder.	The surety acts at the request of principal debtor.
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent to contract.	In the case of a contract of guarantee, where a minor is a principal debtor, the contract is still valid.

**{1/2 M
Each for
Any Six
Points}**

Answer:

(d) As per Section 4(3) of the Sale of Goods Act, 1930, where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell and as per Section 4(4), an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. **{2 M}**

(a) On the basis of above provisions and facts given in the question, it can be said that there is an agreement to sell between Meghna and shopkeeper and not a sale. Even the payment was made by Meghna, the property in goods can be transferred only after the fulfilment of conditions fixed between buyer and seller. As the white polish was done but original design is disturbed due to polishing, bangles are not in original position. Hence, Meghna has right to avoid the agreement to sell and can recover the price paid. **{1 M}**

(b) On the other hand, if shopkeeper offers to bring the bangles in original position by repairing, he cannot charge extra cost from Meghna. Even he has to bear some expenses for repair; he cannot charge it from Meghna. **{1 M}**

Answer 4:

(a) (i) According to section 17 of the Indian Contract Act, 1872, 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 the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case, **{1 M}**

(a) This contract is valid since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects. **{1 M Each}**

- (b) This contract is not valid since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence is equivalent to speech and hence amounts to fraud.
- (c) This contract is not valid since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.
- (ii) (a) **Acceptance must be absolute and unqualified:** As per section 7 of the Indian Contract Act, 1872 acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly. {1^{1/2} M Each}
- (b) **Acceptance must be in the prescribed mode:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance.

Answer:

- (b) Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Delta School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:
- (i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. {2 M}
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard. {2 M}
- (iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order. {2 M}

Answer:**(c) Dissolution of firm:**

Thus, the dissolution of firm means the discontinuation of the jural relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e. the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of partnership. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

{1 M}

Dissolution of Firm Vs. Dissolution of Partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

{1 M Each}

Answer 5:

(a) Duty of the buyer according to the doctrine of "Caveat Emptor": In case of sale of goods, the doctrine 'Caveat Emptor' means 'let the buyer beware'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective, he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling. Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

{2 M}

- (i) Fitness as to quality or use
- (ii) Goods purchased under patent or brand name
- (iii) Goods sold by description
- (iv) Goods of Merchantable Quality
- (v) Sale by sample
- (vi) Goods by sample as well as description
- (vii) Trade usage
- (viii) Seller actively conceals a defect or is guilty of fraud

{1/2 M Each}

Based on the above provision and facts given in the question, it can be concluded that Mrs. Shivani is entitled to get the money back or the right kind of cloth as required serving her purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930].

{1 M}

Answer:

- (b) **Doctrine of Indoor Management:** The Doctrine of Indoor Management is the exception to the doctrine of constructive notice. The aforesaid doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. This can be explained with the help of a landmark case **The Royal British Bank vs. Turquand**. This is the doctrine of indoor management popularly known as **Turquand Rule**. {1 M}
- FACTS of The Royal British Bank vs. Turquand**
- Mr. Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution. A resolution had been passed but not specifying how much the directors could borrow. {1 M}
- Held, it was decided** that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem. {1 M}
- Exceptions to the doctrine of Indoor Management:** Thus, you will notice that the aforementioned rule of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. {1 M}
- The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:
- (a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.
- (b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry. {1 M Each}
- The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority.
- (c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.

Answer:**(c) Distinction between LLP and Limited Liability Company (LLC)**

	Basis	LLP	Limited Liability Company
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).
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 Private company to contain the word "Private limited" as suffix.
5.	Number 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. 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 except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	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.
8.	Minimum number of directors/ designated partners	Minimum 2 designated partners.	Private Co. – 2 directors Public Co. – 3 directors

{1 M Each
for Any 6
Points}

Answer 6:

- (a)** As per the facts stated in the question, Arihant (drawer) after having issued the cheque, informs Jayant (drawee) not to present the cheque for payment and as well as gave a stop payment request to the bank in respect of the cheque issued to Jayant. {1 M}
- Section 138 of the Negotiable Instruments Act, 1881, 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 out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence. {2 M}
- 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. {1 M}

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. Section 140 states 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 that section. {2 M}

Accordingly, the act of Arihant, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881. {1 M}

Answer:

- (b) The right of stoppage of goods in transit means the right of stopping the goods after the seller has parted with the goods. Thereafter the seller regains the possession of the goods. {1 M}
- This right can be exercised by an unpaid seller when he has lost his right of lien over the goods because the goods are delivered to a carrier for the purpose of taking the goods to the buyer. This right is available to the unpaid seller only when the buyer has become insolvent. The conditions necessary for exercising this right are:-
1. The buyer has not paid the total price to the seller
 2. The seller has delivered the goods to a carrier thereby losing his right of lien
 3. The buyer has become insolvent
 4. The goods have not reached the buyer, they are in the course of transit. {1 M Each}
- (Section 50, 51 and 52)
- In the given case A, who is an agent of the buyer, had obtained the goods from the railway authorities and loaded the goods on his truck. After this the railway authorities received a notice from the seller B to stop the goods as the buyer had become insolvent. {1 M}
- According to the Sales of Goods Act, 1930, the railway authorities cannot stop the goods because the goods are not in transit. A who has loaded the goods on his truck is the agent of the buyer. That means railway authorities have given the possession of the goods to the buyer. The transit comes to an end when the buyer or his agent takes the possession of the goods. {1 M}

Answer:

- (c) Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left. {1 M}
- a. **Pledge by mercantile agent [Section 178]:**
- A mercantile agent, who is in the possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of business as a Mercantile Agent.
- Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge. {1 M Each}
- b. **Pledge by person in possession under voidable contract [Section 178A]:** When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 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 without notice of the pawnor's defect of title.

- c. **Pledge where pawnor has only a limited interest [Section 179]:** Where a person pledges goods in which he has only a limited interest i.e. pawnor is not the absolute owner of goods, the pledge is valid to the extent of that interest.
- d. **Pledge by a co-owner in possession:** Where the goods are owned by many person and with the consent of other owners, the goods are left in the possession of one of the co-owners. Such a co-owner may make a valid pledge of the goods in his possession.
- e. **Pledge by seller or buyer in possession:** A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge, provided the pawnee acts in good faith and he has no knowledge of the defect in title of the pawnor.

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