

(GCF-7, GCF-12, GCF-13, GCF-14, GCF-15, GCF-16, GCF-17, SCF-3, VDCF-2 & VCF-3)

DATE: 17.09.2019

MAXIMUM MARKS: 100

TIMING: 3 Hours

BUSINESS LAW & BUSINESS CORRESPONDENCE & REPORTING

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) Yes, the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. {2 M}
 If the letter of acceptance (E-mail) and the Fax of revocation of acceptance reach X at the same time, the formation of contract will depend on the fact that which of the two is opened first by X. If X reads the Fax letter first, revocation is valid but if he reads the E-mail first, revocation is not possible. {2 M}

Answer:

- (b) **Death of all members of a Private Limited Company, Under the Companies Act, 2013:** The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s). {2 M}
 The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.
 In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law. {1 M}
 Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist. {1 M}

Answer:

- (c) X has no remedy against the seller as the doctrine of Caveat emptor will apply: {1 M}
"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 exempting himself. {2 M}
 The rule is enunciated in the opening words of section 16 of the sale of goods act, 1930 which runs thus, "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." {1 M}

Answer 2**(a) Steps to incorporate LLP**

- **Name Reservation:**

- The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP. {1 M}

- Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business. } {1 M}
- **Incorporate LLP:**
 - After reserving a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership (LLP). } {1 M}
 - 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. } {1 M}
- **LLP Agreement:**
 - Execution of LLP Agreement is mandatory as per Section 23 of the Act. } {1 M}
 - LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP. } {1 M}

Answer:

- (b) Right of stoppage of goods in transit:** The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled. } {5 M}
- (i) The seller must be unpaid
 - (ii) He must have parted with the possession of goods
 - (iii) The goods must be in transit
 - (iv) The buyer must have become insolvent
 - (v) The right is subject to the provisions of the Act.
- Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit. } {1 M}

Answer 3:

- (a)** 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 of the firms with the property of the firm, then in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner entitled to claim either - } {2 M}
- (i) Such shares of the profits earned after the death or retirement of the partner which is attribute to the use of his share in the property of the firm; or
 - (ii) Interest at the rate of 6 percent per annum on the amount of his share in the property.
- Based on the aforesaid provisions of the **Section 37** of the Indian Partnership Act legal representative of A can claim: } {2 M}
- (i) The 20% shares of profit (as per the partnership deed);
 - (ii) Interest at the rate of 6 per cent per annum on the amount of A's share in the property.

Answer:

- (b)** It is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are: } {3 M}
- (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. The test of good faith includes:
 - (a) That the expulsion must be in the interest of the partnership;
 - (b) That the partner to be expelled is served with a notice; and
 - (c) That the partner has been given an opportunity of being heard. } {3 M}

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed. }

Answer:

- (c) As per provisions of **Sec. 44(f)** of Indian Partnership Act, 1932, Varun and Tarun are advised to make a petition to the Court for the dissolution of the firm on the ground that the firm cannot be carried on except at a loss. {1 M}
- Since the firm was constituted for fixed term of five years it cannot be dissolved without the consent of all the partners and as such Varun and Tarun cannot compel Arun to dissolve the firm. So the dissolution by court is the only option. {1 M}

Answer 4:

- (a)
- There is a Latin maxim "**Nemo dat quod non habet**" which means that no one can give what he has not got. i.e. no one can transfer better than he himself has.
 - As per this rule only the true owner can sell the goods to another person.
 - 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. Thus the seller cannot transfer to the buyer of goods a better title than he himself has. {1 M}
- (1) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods for document of title to goods would pass a good title to the buyer in the following circumstances; namely;
- (a) If he was in possession of the goods or documents with the consent of the owner;
 - (b) If the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) If the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell.
- (2) **Sale by one of the joint owners:** If one of the several joint owners of goods has the sole possession of them with the permission of the others, the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell.
- (3) **Sale by a person in possession under a voidable contract:** A buyer would acquire a good title to the goods sold to him by a seller :
- who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence and
 - the contract had not been rescinded until the time of the sale. {1 M for each correct 6 points}
- (4) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person.
Note: But such third person should obtain the delivery thereof in good faith and without notice of the previous sale.
- (5) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of the seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person.
Note: But such third person should obtain delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods.
- (6) **Effect of Estoppel:** Where the owner of the goods allow the seller from his conduct to sale the goods then buyer will get a bona fide title of the goods even seller is not the owner of the goods.

- (7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer.
 Sale under the provisions of other Acts:
- (i) Sale by an Official Receiver or Liquidator of the Company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances.
 - (iii) A sale by pawnee can convey/provide a good title to the buyer.

Answer:

- (b) The stated problem falls under the head '**anticipatory breach of contract**' defined in **Section 39** of the Indian Contract Act, 1872. {1 M}
- The case law applicable here is **Frost vs. Knight**. As per details in the problem, price as contracted Rs. 40 per kg on 10.11. 2006 rose to Rs. 50 per kg as on 4.12.2006 and finally to Rs. 53 per kg, on 09.12.2006. {1 M}
- The answer to the problem is that
- 1. Mr. Ramaswamy can repudiate the contract on 04.12.2006 and can claim damages of Rs. 10 per kg viz. Rs. 1,00,000.
 - 2. He could wait till 09.12.2006 and claim Rs. 1,30,000 i.e. Rs. 13 per kg.
 - 3. If the Government, in the interim period i.e. between 04.12.2006 and 09.12.2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Ramaswamy will not be able to recover any damages whatsoever. {3 M}

Answer 5:

- (a) The offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention in to a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. 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 invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer. {2.5M}
- The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Ms. Lovely by selecting the dress and approaching the shopkeeper for payment simply made an offer to buy the dress selected by her. {1.5M}
- If the shopkeeper does not accept the price, the interested buyer cannot compel him to sell. So Ms Lovely can't compel seller to sell the dress. {1 M}

Answer:

- (b) The House of Lords in Salomon Vs Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee. {1 M}

1. The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company. {1.5 M
2. The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in *Re Sir Dinshaw Maneckji Petit and Juggilal vs. Commissioner of Income Tax*. Each}

Answer:

- (c) Section 69 of the Indian Contract Act, 1872 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". {2 M}
- In the given problem W has made the payment of lawful dues of Z in which W had an interest. Therefore, W is entitled to get the reimbursement from Z. {1 M}

Answer 6:

- (a) **Parties must intend to create legal obligations:** There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts. But it will make a valid contract if it is out of natural loves affection and agreement is in writing signed & registered. {2.5 M}
- In the given question, Mr. Ramesh promised to pay Rs. 50,000 to his wife so that she can spend the same on her birthday. However, subsequently, Mr. Ramesh failed to fulfill the promise, for which Mrs. Lali wants to file a suit against Mr. Ramesh. Here, in the given circumstance wife will be able to recover the amount as it was out of natural loves affection and the agreement is in writing, signed and registered and there is nearby relationship between the parties. {1.5 M}
- {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**. {1.5 M}
- FACTS of The Royal British Bank vs. Turquand**
- Mr. Turquand was the official manager (liquidator) of the insolvent company. 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. 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.

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.

In **Howard vs. Patent Ivory Manufacturing Co.** where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

(1.5 M)

- (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.

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. **Anand Bihari Lal vs. Dinshaw & Co.**

(1.5 M)

- (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.

Forgery may in circumstances exclude the '**Turquand Rule**'. The only clear illustration is found in the **Ruben v Great Fingall Consolidated**. It was held, that the rule has never been extended to cover such a complete forgery.

(1.5 M)

PAPER : BUSINESS CORRESPONDENCE & REPORTING

The Question Paper comprises of 5 questions of 10 marks each.

Question No. 7 is compulsory. Out of questions 8 to 11, attempt any three.

SECTION-B : BUSINESS CORRESPONDENCE & REPORTING (40 MARKS)

Answer 7:

- (a) (i) d
(ii) c
(iii) a
(iv) b
(v) d

{Each 1 Mark}

Answer:

- (b) Visual communication is effected through visual aids such as signs, typography, drawing, graphic design, illustration, color and other electronic resources usually reinforces written communication. It is a powerful medium to communicate. Thus print and audio-visual media makes effective use of adverts to convey their message. Visuals like videos graphs, pie charts and other diagrammatic presentations convey clearly and concisely a great deal of information.

{1 M}

Answer:

- (c) (i) d
 (ii) c
 (iii) By whom was this essay written?
 (iv) Sheila exclaimed how smart Seema was.
- } {Each 1 Mark}

Answer 8:

(a) Memo

XYZ Consultants
 32, Jai Hind Road
 Nagpur, India

} {1 M}

Inter Office Memo

Date: 10th April, 2019

To: The all staff members From: HR department Reference : HR/Circular/2019/03

} {1 M}

Subject: Dismissal of staff member

This is to inform that Mr. PQR, holding the position of Sales Head has been suspended from his responsibilities due to multiple charges of misappropriation of office funds against him. He is currently at large and avoiding police arrest. Staff is instructed to immediately report any information/clue about him to the undersigned.

} {3 M}

Answer:

- (b) A communication network refers to the method and pattern used by members of an organization to pass on information to other employees in the organization. Network helps managers create various types of communication flow according to requirement of the task at hand. Some companies have established and predefined networks of communication for specified venture.
- } {1 M}

Answer:

- (c) (i) a
 (ii) c
 (iii) A pen is used by Rajesh to sketch figures.
 (iv) Elders always say that if you work hard, you will succeed. (Universal truth)
- } {Each 1 Mark}

Answer 9:

(a) Answer Hints for Article

- Both play an equally significant role
 - Only physical fitness keeps the body in shape
 - Six packs, abs, muscular body.....all look impressive but does running and doing cardio take care of the mind.
 - Is it fine to be dumb in the head and have a strong, finely chiselled body?
 - Mind is the hard drive of a human body. Data stored, collected, used etc.
 - An active mind ensures proper functioning of the whole system
 - Quote like, 'an empty mind is a devil's workshop'.
 - However, physical prowess and mental agility both have their own specific and need based roles.
- } {Any 5 Points Each 1 Mark}

Answer:

(b) Various desirable characteristics of effective communication are:

1. **Clarity:** Any spoken or written communication should state the purpose of message clearly. The language should be simple. Sentences ought to be short as the core message is lost in long, convoluted sentences. Each idea or point must be explained in a separate bulleted points or paragraphs. Make it easy for the reader to grasp the intent of the communiqué.
2. **Conciseness:** Brevity is the essence of business communication. No one has the time to read long drawn out essays. Besides, the core content is lost in elaborate details. Avoid using too many irrelevant words or adjectives, for example, 'you see', 'I mean to say', etc. Ensure that there are no repetitions
3. **Concreteness:** The content of your communiqué should be tangible. Base it on facts and figures. Abstract ideas and thoughts are liable to misinterpretation. Make sure that there is just sufficient detail to support your case/ argument and bring focus to the main message
4. **Coherence:** Coherence in writing and speech refers to the logical bridge between words, sentences, and paragraphs. Main ideas and meaning can be difficult for the reader to follow if the writer jumps from one idea to another and uses contradictory words to express himself. The key to coherence is sequentially organized and logically presented information which is easily understood. All content under the topic should be relevant, interconnected and present information in a flow.
5. **Completeness:** A complete communication conveys all facts and information required by the recipient. It keeps in mind the receiver's intellect and attitude and conveys the message accordingly. A complete communication helps in building the company's reputation, aids in better decision making as all relevant and required information is available with the receiver.
6. **Courtesy:** Courtesy implies that the sender is polite, considerate, respectful, open and honest with the receiver. The sender of the message takes into consideration the viewpoints and feelings of the receiver of the message. Make sure nothing offensive or with hidden negative tone is included.
7. **Listening for Understanding:** We are bombarded by noise and sound in all our waking hours. We 'hear' conversations, news, gossip and many other forms of speech all the time. However, most of it is not listened to carefully and therefore, not understood, partially understood or misunderstood. A good listener does not only listen to the spoken words, but observes carefully the nonverbal cues to understand the complete message. He absorbs the given information, processes it, understands its context and meaning and to form an accurate, reasoned, intelligent response.
The listener has to be objective, practical and in control of his emotions. Often the understanding of a listener is coloured by his own emotions, judgments, opinions, and reactions to what is being said. While listening for understanding, we focus on the individual and his agenda. A perceptive listener is able to satisfy a customer and suggest solutions as per the needs of the client
8. **Focus and Attention:** Everyday work environment has multiple activities going on simultaneously. The ringing of the phone, an incoming email, or a number of tasks requiring your attention, anxiety related to work, emotional distress etc. can distract you. Such distractions are detrimental to the communication process with an individual or a group of people. You may overlook or completely miss important points or cues in the interaction. Thus, keeping your focus and attention during the communiqué is imperative for effective communication.

**{Any 4
Points
Each
1/2
Mark}**

9. Emotional Awareness and Control: Emotional awareness is a necessary element of good communication. While interacting with another person or a group, it is important to understand the emotions you and he/ she/ they are bringing to the discussion. Managing your own and others emotions and communicating keeping in mind the emotional state of others helps in smooth interaction and breakdown of the communication process.

Answer:

- (c) (i) d
(ii) We can do the work only by next week.
(iii) Teacher requested the children to use a blue pen for their homework. } {Each 1 Mark}

Answer 10:

- (a) **Hazards of Passive Smoking (Title)** } {1 M}

A lot of research and studies have concluded that second hand smoke, or passive smoking as it is commonly called is equally hazardous to health as is active smoking. } {2 M}

Consistent results show that passive smoking causes lung cancer; also a study brings out a link between parental smoking and damage in children. } {2 M}

Answer:

- (b) A complete communication conveys all facts and information required by the recipient. It keeps in mind the receiver's intellect and attitude and conveys the message accordingly. A complete communication helps in building the company's reputation, aids in better decision making as all relevant and required information is available with the receiver. } {1 M}

Answer:

- (c) (i) b
(ii) d
(iii) An apology letter should be written by you.
(iv) Uncle complained that he was unwell. } {Each 1 Mark}

Answer 11:

- (a) Letter
Manager Operations and Admin
Net Solutions
Mumbai
Administration Head
Food for you Solutions
Mumbai
15th Feb, 2019 } {1 M}

Dear Sir/Madam
Sub: Complaint against food quality } {1 M}

This with reference to the food supplied to our cafeteria by your company's kitchen. Unfortunately, for the past few weeks, we have observed that the quality of food items, especially rice, wheat flour and pulses has degraded considerably.

A few of our employees complained of ill health after having consumed your food. I presume stale food is not being sent to us. } {2 M}

Kindly assure that the raw material you use is of high quality standards and is ISI approved.

I request you to look into this matter urgently and present a report within 2 days time to avoid a stern action.

Thanks and Regards,

Name

Manager, Ops and Admin

Net Solutions

(Signed)

Manager, Office and food supplies Ltd.

{1 M}

Answer:

- (b)** Nonverbal communication is the process of communicating by sending and receiving wordless messages. These messages can aid verbal communication, convey thoughts and feelings contrary to the spoken words or express ideas and emotions on their own. Some of the functions of nonverbal communication in humans are to complement and illustrate, to reinforce and emphasize, to replace and substitute, to control and regulate, and to contradict the denoted message {1 M}
- Physical nonverbal communication: An individual's body language that is, facial expressions, stance, gestures, tone of voice, touch, and other physical signals constitute this type of communication. For example, leaning forward may mean friendliness, acceptance and interest, while crossing arms can be interpreted as antagonistic or defensive posture.
 - Paralanguage: The way you say something, more than the actual words used, reveal the intent of the message, The voice quality, intonation, pitch, stress, emotion, tone, and style of speaking, communicates approval, interest or the lack of it.
 - Aesthetic communication: Art forms such as dancing, painting, sculptor, music are also means of communication. They distinctly convey the ideas and thoughts of the artist.
 - Appearance: Appearance is usually the first thing noticed about a person. A well dressed and groomed person is presumed to be organized and methodical, whereas a sloppy or shabby person fails to make a favourable impression. Therefore, dressing appropriately in all formal interactions is emphasized. The dress code in office is generally formal. It constitutes of formal suits, trousers with plain white or light coloured shirts and leather shoes. Bright colours, jeans, T - shirts, especially with slogans and other informal wear are frowned upon. For women formal two-piece trouser or skirt sets or formal ethnic wear like sarees, is permissible.
 - Symbols such as religious and status.
- {Any 2 Points Each 1/2 Mark}

Answer:

- (c)**
- (i) c
 - (ii) Women led a conservative lifestyle in olden days
 - (iii) The girl asked where I lived?
- {Each 1 Mark}
