

(GCF-1, GCF-2, GCF-4, GCF-5+8, GCF-6+9, GCF-10, GCF-11, VCF-1, VCF-2, SCF-1 & VDCF-1)
 DATE: 16.10.2019 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) 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". {1 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:

- (b) Section 5 (1) of the Companies Act, 2013 states that the Articles of a company contain the regulations for the management of a company. Further section 5 (2) provides that the Articles of a company shall contain all matters that are prescribed under the Act and also such additional matters as may be considered necessary for the management of the company. {1 M}
- Removal of Law Officer:** The Memorandum and Articles of Association of a company are binding upon company and its members and they are bound to observe all the provisions of memorandum and articles as if they have signed the same [Section 10(1)]. {1 M}
- However, the company and members are not bound to outsiders in respect of anything contained in memorandum/articles by which such outsiders have been given any rights. This is based on the general rule of law that a stranger to a contract cannot acquire any right under the contract. {1 M}
- In this case, Articles conferred a right on 'X', the law officer that he shall not be removed except on the ground of proved misconduct. In view of the legal position explained above, 'X' cannot enforce the right conferred on him by the articles against the company. Hence the action taken by the company (i.e. removal of 'X' even though he was not guilty of misconduct) is valid. {2 M}

(Eley V Positive Govt. Security Life Assurance Co.)

Answer:

- (c) **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. {1 M for each correct 4 points}
- 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
 - 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 2:**(a) Steps to incorporate LLP**

- **Name Reservation :**
 - The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
 - Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.
- **Incorporate LLP:**
 - 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:**
 - 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.

Answer:

- (b) Position of Mr. D:** Mr. D sold some goods to Mr. E for Rs. 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

Rights of Mr. D: As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

- (i) **Suit for price (Section 55)**
In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.
- (ii) **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.
- (iii) **Suit for interest [Section 61]:** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

Answer 3:**(a) MINOR'S POSITION IN PARTNERSHIP (Section 30)**

A minor cannot become a partner in partnership firm but he can be admitted for the benefits of the firm with the consent of all the partners.

Rights:

- A minor has a right to claim his agreed share of the profits in firm.
- Minor can access and inspect and can take copy of 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, minor has a right to decide within 6 months to become a partner or not to become a partner and if he decide to become a partner in partnership firm then his share in profits and loss will remain same.

Liabilities:

- The liability of minor is limited upto the extent of his share in profits of the firm.
- Minor has no personal liability for the debts of the firm incurred during his minority.
- Minor cannot be declared insolvent, but if the firm is declared insolvent his share in the firm vests in the Official Receiver/Assignee.
- Minor has to decide within 6 months on attaining the majority that whether he wants to become a partner in a firm or not and if he does not decide then he automatically becomes the partner in the firm.
- If a minor becomes partner in a firm then he shall be personally liable to third parties for all acts of the firm done **since he was admitted to the benefits of partnership**
- If a minor decides not to become a partner then his rights and liabilities continue to be those of a minor up to the date of giving public notice. His share shall not be liable for any acts of the firm done after the date of the notice.

{1/2 M for
each correct
point}

Answer:

- (b) Agreement in Restraint of Trade:** Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of 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, so it is a valid contract.

{2 M}

In the instant case, agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

Therefore, 'X' can be restrained by an injunction from practicing on his own account in within the said area of 20 Kms for another one year.

{1 M}

Answer:

- (c)** As per sec. 39 of Indian Contract Act, 1872 when a party to contract refuses to perform the promise or disable himself from performing before due date it is called anticipatory breach of contract.

{1 M}

In the given problem Dubious Textiles has indicated its unwillingness to supply the cotton shirts on 1st November 2004 itself when it has time upto 31st December 2004 for performance of the contract of supply of goods. It is therefore called anticipatory breach of contract.

{1 M}

Thus Retail Garments show room can claim damages from Dubious Textiles immediately after 1st November, 2004, without waiting upto 31st December 2004.

The damages will be calculated at the rate of Rs. 50 per shirt i.e. the difference between Rs. 350/- (the price prevailing on 1st November) and Rs. 300/- the contracted price.

{1 M}

Answer 4:

- (a) When does the transit come to an end?**

The right of stoppage in transit is lost when transit comes to an end. Transit comes to an end in the following cases:

- When the buyer or other bailee obtains delivery.
 - Buyer obtains delivery before the arrival of goods at destination.
 - Where the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods as soon as the goods are loaded on the ship, unless the seller has reserved the right of disposal of the goods.
 - If the carrier wrongfully refuses to deliver the goods to the buyer.
 - Where goods are delivered to the carrier hired by the buyer, the transit comes to an end.
 - Where the part delivery of the goods has been made to the buyer, there the transit will come to an end for the remaining goods which are yet in the course of transmission.
 - Where the goods are delivered to a ship chartered by the buyer, the transit comes to an end. [section 51]
- {1 M for each correct 6 points}

Answer:

(b)

- The partner can be expelled only if conditions of **Sec. 33** of Indian Partnership Act, 1932 are followed.
 - A partner may be expelled from a firm only if,
 - (a) the power to expel has been conferred by contract between the partners, and
 - (b) Such a power has been exercised in good faith for the benefit of the firm.
 - (c) Expulsions is by majority of partners.
 - The partner who is being expelled must be given reasonable notice and opportunity to explain his position and to remove the cause of his expulsion and it should be in interest of the firm.
 - In the absence of an express agreement authorizing expulsion, the expulsion of a partner is not proper and is without any legal effect.
 - Anil's objection to the admission of Abhishek is also justified as a new partner can be admitted only with the consent of all the partners. **[Section 31(i)]**
 - Yes, Anil is justified in his objections. }
- {3 M}
- {1 M}
- {1 M}
- {1 M}

Answer 5:

- (a)** In India, consideration may proceed from the promise or any other person who is not a party to the contract. The definition of consideration as given in section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, there can be a stranger to a consideration but not stranger to a contract **[Chinnaya v. Ramaya]**.
- In the given problem, Mr. Balwant has entered into a contract with Ms. Reema, but Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. Balwant to Ms. Reema and such consideration from third party is sufficient to the enforce the promise of Ms. Reema, the daughter, to pay an annuity to Mr. Sawant. Further the deed of gift and the promise made by Ms. Reema to Mr. Sawant to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.
- Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it. Hence, the contention of Ms. Reema is not valid.
- {2^{1/2} M}
- {1^{1/2} M}
- {1 M}

Answer:

- (b)** Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company.

The **Salomon Vs. Salomon and Co Ltd.** laid down the foundation of the concept of corporate veil or independent corporate personality.

"The Company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers, company is not in law the agent of the subscribers or trustees for them."

Lifting of Corporate Veil:

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (1) **To determine the character of the company i.e. to find out whether co-enemy or friend:** In the law relating to trading with the enemy where the test of control is adopted. The leading case in this point is **Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.** It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company. {1 M}
- (2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. {1 M}
Where corporate entity is used to **evade or circumvent tax**, the Court can disregard the corporate entity. [**Dinshaw Maneckjee Petit**].
- (3) **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (**The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another**). {1 M}
- (4) **Formation of subsidiaries to act as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company. In the case of **Merchandise Transport Limited vs. British Transport Commission**. {1 M}
- (5) **Company formed for fraud/improper conduct or to defeat law:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations. [**Gilford Motor Co. vs. Horne**] {1 M}

Answer 6:

- (a) As per **Section 41** of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party. {3 M}

Therefore B can sue A only for Rs. 4000. } {1M}

Answer:

- (b) Yes, a contract need not be performed when the parties to it agree to substitute a new contract for it or to rescind or alter it. (**Section 62**, Indian Contract Act, 1872). Here, in the given problem, novation has taken place as one of the parties has been replaced with a third party. } {2M}
- Therefore, N can claim the money from O. } {1M}

Answer:

- (c) 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. } {2M}
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^{1/2} 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. } {1^{1/2} 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) Passage

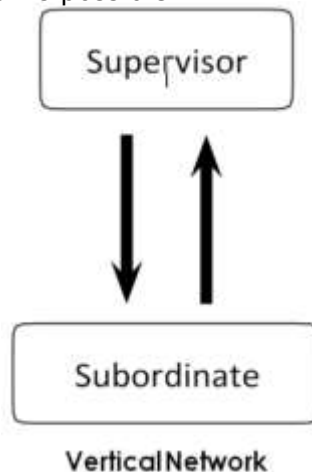
1. (c)
 2. (d)
 3. (c)
 4. (c)
 5. a. Parameters
b. Monitoring
- {1 M each}

Answer:

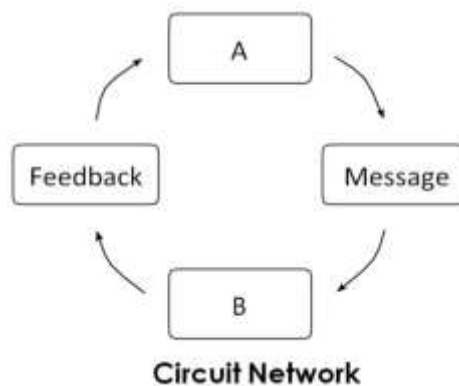
(b) 1.

Vertical Network:

The vertical network is a formal network. It is usually between a higher ranking employee and a subordinate. In this two-way communication, immediate feedback is possible.

{1^{1/2} M}2. **Circuit Network:**

When two persons communicate with each other sending messages and feedback, they form a communication circuit. Therefore it is known as circuit network. The two people interacting can be colleagues placed at the same hierarchical level in the organization.

{1^{1/2} M}

Answer:

- (c) 1. Jump on the bandwagon – an activity, group, movement, etc. that has become successful or fashionable and so attracts many new people
 2. Beat a dead horse – to waste effort on something when there is no chance of succeeding } {1 M each}

Answer 8:

- (a) The Fearless Indian Army
 The Indian army is undoubtedly one of the finest armies in the world. Since prehistoric to modern times the Indian soldiers are one of bravest, fighting both for homeland as well as for ensuing peace even on foreign lands such as peace keeping force in Sri Lanka.
 Our soldiers never surrendered before enemies. Their motto has always been 'do or die'. During Indo- china war of October – November, 1962 and later on in the Indo-Pak war of September 1965, one Indian Soldier killed many soldiers of enemy armies on various fronts. During the World war II the Indian soldiers proved their mettle on the foreign land of Europe' Africa and the Korea on various missions. } {2 M}
 The Indian army has proved their superiority whenever the neighboring country Pakistan challenged us. The Kargil war In 1999 was triggered by the spring and summer incursion of Pakistan backed armed forces into territory on the Indian side of the LOC around Kargil in State of Jammu & Kashmir. The Indian forces were prepared for a major high altitude offensive against Pakistani posts along the border in the Kashmir region. India had to move five infantry divisions, five independent brigades and 44 battalions of paramilitary troops to Kashmir. The total Indian army troop strength in the region reached to 7,30,000. The build-up included the deployment of around 60 frontline aircraft. The Indian army campaign to repel the intrusion left 524 Indian soldiers dead and 1,363 wounded, as per the data released by then Indian defense minister Shri George Fernandez on December 01, 1999. } {3 M}

Answer:

- (b) 1. **Concrete:** 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. } {1^{1/2} M}
 2. **Coherent:** 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. } {1^{1/2} M}

Answer:

- (c) 1. (d) Boisterous
 2. (a) Colossal } {1 M each}

Answer 9:

- (a) Précis
 Education for handicapped children } {1 M}
 Education opportunities for handicapped children are sparse as compared to the normal children. Expenditure on their education is treated as a wastage and rather non-productive. The view that education for handicapped requires higher costs and specialized people has led to discouragement towards development of measures } {2 M}

towards the same. The National Education Policy recommends integrating the education for handicapped with the normal children with the help of specialized teachers and other aids. Training of teachers and necessary infrastructure shall help the handicapped children and shall relieve their parents regarding worries about their education. {2 M}

Answer:

- (b) Emotional Awareness and Control:** "Human behavior is not under the sole control of emotion or deliberation but results from the interaction of these two processes," Loewenstein said. {1½ M}
- However, emotions play a major role in our interactions with other people. They are a powerful force that affect our perception of reality regardless of how hard we try to be unbiased. In fact, intense emotions can undermine a person's capacity for rational decision-making, even when the individual is aware of the need to make careful decisions.
- Consequently, 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. {1½ M}

Answer:

- (c)** a. The asked his manager if he should email that letter again.
b. She asked me how I had done the sum. {1 M each}

Answer 10:

(a)

ABC Technopolis Ltd.
65, Nehru Nagar, New Delhi {1 M}
Interoffice Memo

Date : 25 July, 2016
To : Office Manager
From : Mr. Ashok Reddy, Purchase Officer {2 M}
Reference : 216/BM
Subject : Purchase of Office furniture

As desired, the order for the supply of office furniture (chairs and tables, sofa sets) has been placed with Shivshakti Furniture Mart, Kirbi place, New Delhi. The chairs and tables will be supplied in multiple lots. The order will be completed in ten days. {2 M}

Answer:

- (b) Cultural barriers:** Understanding cultural aspects of communication refers to having knowledge of different cultures in order to communicate effectively with cross culture people.. Understanding various cultures in this era of globalization is an absolute necessity as the existence of cultural differences between people from various countries, regions tribes and, religions, where words and symbols may be interpreted differently can result in communication barriers and miscommunications. {1 M}
- Multinational companies offer special courses and documents to familiarize their staff with the culture of the country where they are based for work. {2 M}

Answer:

- (c)** 1. The country is covered by the corporation's sales and service organization.
2. Their new dental equipment is only being marketed by FCS in Europe. {1 M each}

Answer 11:**(a)**

Mohit Agarwal
36, Civil Lines
Meerut, UP
Phone: 98XXXXXXX
Email: abc@xyz.com

{1 M}

Objective:

To be associated with an organisation that offers tremendous opportunities for growth and autonomy, providing a challenging environment to harness my creative streak, innovative ideas and utilise my experience as a media correspondent to the maximum.

{1 M}

SUMMARY:

- One year of experience as a staff correspondent in CVB TV.
- Two years of experience as Head Regional News XYZ TV
- Proven skills in content planning, selection and presentation.
- Excellent Reporting skills in English and Hindi.

{1/2 M}

EXPERIENCE:

2016 – PRESENT Head Regional News XYZ TV Meerut

- Planning and deployment of staff correspondents
- Sponsorship Planning from corporate and media houses
- Staff selection and Training
- Media Planning for regional corporate houses

{1/2 M}

2015– 2016 Staff Correspondent CVB TV

- Capturing Events
- Conceptualising stories
- Presenter for “Khufia” section of Daily News

EDUCATION:

2014 Masters in Mass Comm, ASD University, New Delhi

2012 English(H), ASD University, New Delhi

INTERSHIPS:

2014 Two month at World Journalists Association (Articles Section)

2013 4 months at CNN TV in News production and planning

{1/2 M}

SKILLS

- Well versed with Media Software's
- Meticulous Planning and Execution skills with an eye for detail

{1/2 M}

PERSONAL DETAILS

Date of Birth 15 June, 1992

Marital Status Unmarried

Languages Known English, Hindi

{1/2 M}

DECLARATION

I solemnly declare that all the above information is correct to the best of my knowledge and belief.

{1/2 M}

Date: Nov 13, 2018

Place: Meerut

(Mohit Agarwal)

Answer:

- (b) Attitude barriers-** Personal attitudes of employees can affect communication within the organization. A proactive, motivated worker will facilitate the communication

{1 M}

process, whereas a dissatisfied, disgruntled, shy, introvert or lazy employee can delay, hesitate in taking the initiative, or refuse to communicate. Attitude problems can be addressed by good management and regular interaction with staff members. } **{2 M}**

Answer:

- (c)** a. The crowd was cheering the man who saved the child from the burning house.
b. The police booked seven movie goers in the city for disrespecting the national anthem. } **{1 M each}**
