

(GCF-19, GCF-20, VCF-4, SCF-6 &amp; SCF-7)

DATE: 05.02.2020

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<sup>1/2</sup> M}
- {1<sup>1/2</sup> 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. {2 M}

"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. {1 M}  
In the case of **Merchandise Transport Limited vs. British Transport Commission**.
- (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<sup>1/2</sup> 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<sup>1/2</sup> 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-2
- |     |          |                 |
|-----|----------|-----------------|
| (1) | Option c | } {Each 1 Mark} |
| (2) | Option b |                 |
| (3) | Option a |                 |
| (4) | Option d |                 |
| (5) | Option b |                 |

**Answer:****(b)** Passage -1

Ministry's Decision Revoked (Heading) } {1 M}

(I) S. Korean steel maker Posco under attack

(II) Prpsl for steel plant in Odisha rcnsdrd

(III) Need to rethink the descn

(a) Not based on solid grounds

(b) FDI's

(c) Land aqstn from natives nt easy

(d) Protests frm land holders

(IV) No concrete result

(a) 8 years past; standstill

(b) Neither prpnt nor govt. able to justify its moves

(c) Leaves the matter open ended.

{1/2 Mark Each}

Key Used:

(1) S= south

(2) Prpsl= proposal

(3) Rcnsdrd=reconsidered

(4) Descn= decision

(5) Aqstn- acquisition

(6) Nt= not

(7) Frm= from

(8) Prpnt=proponent

(9) Govt= government.

(10) FDI= foreign direct investment.

{2 M}

**Answer 8:****(a)** Barriers in communication:

● Physical Barriers

● Cultural Barriers

● Language Barriers

● Technology Barriers

● Emotional Barriers

{1 M}

Technology Barriers: Being a technology driven world, all communication is dependent on good and extensive use of technology. However, there might arise technical issues, like server crash, overload of information etc which lead to miscommunication or no communication at all.

{1 M}

Language Barriers: It's a cosmopolitan set up, where people of different nationalities move from their home to other countries for work. As a result, it is difficult to have a common language for communication. Hence, diversity gives rise to many languages and it acts as a barrier at times.

{1 M}

**Answer 8 (b):****(i)** Direct to Indirect Speech:

The athlete said that he could break all records

**(1 Mark)****Answer 8 (b):****(ii)** Synonyms

Option c

**(1 Mark)**

**Answer:****(c)** Television: Bane or Boon (Title) } {1 M}

Television affects our lives in several ways. We should choose the shows carefully. {2 M}

Television increases our knowledge It helps us to understand many fields of study. {2 M}

It benefits and people and patients. There are some disadvantages too some people devote a long time to it. Students leave their studies and it distracts their attention.

**Answer 9:****(a)** Vertical Network and Wheel & Spoke Network.

Vertical Network	Wheel and Spoke Network	
A formal network. It is usually between a higher ranking employee and a subordinate.	A network with a single controlling authority who gives instructions and orders to all employees working under him/her.	{2 M}
A two way communication happens	Two way communication happens but useful only in small organizations.	{2 M}

**Answer 9(b):****(i)** Idioms  
Option c**(1 Mark)****Answer 9(b):****(ii)** Passive to Active:  
The school authorities declared the results**(1 Mark)****Answer 9(b):****(iii)** Antonyms  
Option d**(1 Mark)****Answer :****(c)**

CIRCULAR

Circular No. XXXIV Dec 31, 2018

NEW YEAR PARTY

{1 M}

For all employees

Wishing All a very Happy, prosperous and productive New Year 2019. A New Year party is being organized in the office premises on the coming weekend (Jan 5, 2019) at 7 PM. Everyone is cordially invited with their families.

{2 M}

The events would be as follows:

- Live performance by the pop band 'ASD'
  - Couple Dance competition
  - Stand up Comedy
  - Surprise Gifts for kids
  - Lucky Draw
  - Buffet Dinner with special buffet for the kids Looking forward to an active participation.
- {2 M}

Romi Mistry Manager, HR

**Answer 10:****(a)** Communication is a process of exchanging information, ideas, thoughts, feelings and emotions through speech, signals, writing, or behavior. } {1 M}



Communication is relevant in daily life as we experience it in all walks of life. While talking to friends, family and office colleagues, while passing on a piece of information, while starting a campaign or a protest march; at every step we want to communicate a message. The audience differs and the purpose differs; yet communication happens. {1 M}

**Answer:**

- (b) Fill in the blanks:
- |      |          |                 |
|------|----------|-----------------|
| (i)  | Option c | } {1 Mark Each} |
| (ii) | Option b |                 |
| (i)  | Option   |                 |

**Answer:**

- (c) Seema Solanki  
Format for a Resume showing years of experience
- Name and contact details
  - Objective Summary:
  - Career Summary
  - Experience
  - Company 1 Job title
    - Responsibilities/Achievements
  - Company 2 Job title
    - Responsibilities/Achievements
  - Educational Details
  - Hobbies and Interests
  - Signature
  - References with their phone numbers
- Objective Summary:** seeking leadership roles and making a meaningful impact on the growth of the organization.
- Career Summary:** Have been associated with firms with an employee size of around 1200. I have a rich experience in costing and finance operations. My expertise lies in handling cash flow and pay rolls process.
- Company Name 1 Job title: Analyst
- Job Responsibilities:
- Handling finance operations and determining major financial objectives.
  - Supervising monthly financials
  - Deducing cost feasibility of cost based projects Company Name 2
- Job title: Manager/Sr. Consultant Job Responsibilities:
- Designing and implementing cost effective techniques, policies and procedures to enhance financial growth.
  - Managing pay rolls: computations of salaries, TDS, PPF
  - Heading a six member team, handling daily basis output and ACR's.
- Educational details**  
(Pointers as follows)  
School, class Xth and XIIth marks/grades  
College/University: B.Com  
ICAI, Mumbai : CA
- Each Point 1/2 Mark**

**Answer 11:**

- (a) **Chain of Command:** The communication pattern that follows the chain of command from the senior to the junior is called the chain network. Communication starts at the top, like from a CEO, and works its way down to the different levels of employees. It involves a lot of organizational hierarchy. **{2 M}**
- Drawbacks:** The chain network often takes up time, and communication may not be clear. It creates a lot of miscommunication as the message travels a long path. **{1 M}**

**Answer 11:**

- (b) Active to Passive:
- (i) Many battles were fought by Rana Pratap
- (ii) Football matches are watched by people late night. **{1 Mark Each}**

**Answer:**

- (c) Date: Jan 2, 2019  
 Venue: Conference Hall, 3<sup>rd</sup> Floor  
 Meeting started at 11 : 00 AM.  
 In attendance : Mr. BNM Managing Director, Mr. ASD Head , Sales and Marketing, Mr. FGH, Product Head, Mr. JKL Plant Head, two Senior Consultants from QWE Consulting and Market Research, three members of the Sales team  
 Mr. FGH, Product Head
- Introduced the agenda
  - Demonstrated the prototype of the new product
  - Explained the utility and target customers
  - Existing Variants in the market vs variants to be introduced by the company in 6 months time
- Mr. JKL, Plant Head
- Discussed preparedness for mass manufacturing of the new product
  - Discussed potential vendors to manufacture the variants
- Mr. VBN Senior Consultant, QWE Consulting and Market Research
- Discussed marketing strategy for product launch
  - Discussed media advertising for product promotion
- Mr. ASD Head, Sales and Marketing, Mr. RTY Executive, Sales Team
- Presented the estimated demand and sales figures for first quarter (initial 3 months after launch)
  - Discussed feedback received from the sample customers
- All the participants consented to submit their observations and reports to Mr. BNM Managing Director, Mr. ASD Head, Sales and Marketing,  
 The Head of Sales and Marketing proposed a vote of thanks and declared the next meeting to discuss reports to be held on Feb 4, 2019.  
 ATR to be submitted by Jan 25, 2019 to the Head of Sales and Marketing.
- Each Point 1/2 Mark**

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