

MOCK TEST PAPER 1

FOUNDATION COURSE

PAPER 2: BUSINESS LAWS AND BUSINESS CORRESPONDENCE AND REPORTING

SECTION A: BUSINESS LAWS

Question No. 1 is compulsory.

Answer any four questions from the remaining five questions.

ANSWERS

1. (a) Section 73 of Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the instant case, Mr. Murti filed the suit against Himalya Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

On the basis of above provisions and facts of the case, it can be said that Mr. Murti can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

- (b) (A) Yes, it is mandatory for Vinod to withdraw his nomination in the said OPC as he is leaving India permanently as only a natural person who is an Indian citizen and resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year shall be a nominee in OPC.

Since Vinod will not satisfy this condition, so he needs to withdraw his nomination.

- (B) No, Rohan cannot make his 17 year old son as a nominee of his OPC as no minor shall become member or nominee of the OPC or can hold beneficial interest.

- (c) Section 13 of the Sale of Goods Act, 1930 specifies cases where a breach of condition be treated as a breach of warranty. As a result of which the buyer loses his right to rescind the contract and can claim damages only.

In the following cases, a contract is not avoided even on account of a breach of a condition:

- (i) Where the buyer altogether waives the performance of the condition. A party may for his own benefit, waive a stipulation. It should be a voluntary waiver by buyer.
- (ii) Where the buyer elects to treat the breach of the conditions, as one of a warranty. That is to say, he may claim only damages instead of repudiating the contract. Here, the buyer has not waived the condition but decided to treat it as a warranty.
- (iii) Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72 of the Indian Contract Act, 1872.
- (iv) Where the fulfilment of any condition or warranty is excused by law by reason of impossibility or otherwise.

2. (a) **Definition of 'Contingent Contract' (Section 31 of the Indian Contract Act, 1872):** A contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Example: A contracts to pay B Rs. 1,00,000 if B's house is burnt. This is a contingent contract.

Rules Relating to Enforcement: The rules relating to enforcement of a contingent contract are laid down in sections 32, 33, 34, 35 and 36 of the Act.

- (i) **Enforcement of contracts contingent on an event happening:** Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void.
- (ii) **Enforcement of contracts contingent on an event not happening:** Where a contingent contract is made contingent on non-happening of an event, it can be enforced only when its happening becomes impossible.
- (iii) **A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or 'conduct' as impossible of happening.**
- (iv) **Contingent on happening of specified event within the fixed time:** Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.
- (v) **Contingent on specified event not happening within fixed time:** Section 35 also says that "Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen".
- (vi) **Contingent on an impossible event (Section 36):** Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

- (b) **LLP gives the benefits of limited liability of a company and the flexibility of a partnership**

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

3. (a) **Definition of Partnership:** 'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (Section 4 of the Indian Partnership Act, 1932)

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. Association of two or more persons
2. Agreement
3. Business

4. Agreement to share Profits
5. Business carried on by all or any of them acting for all

ELEMENTS OF PARTNERSHIP

The definition of the partnership contains the following five elements which must co-exist before a partnership can come into existence:

1. **Association of two or more persons:** Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

The Partnership Act is silent about the maximum number of partners but Section 464 of the Companies Act, 2013 read with the relevant Rules has now put a limit of 50 partners in any association / partnership firm.

2. **Agreement:** It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus, the nature of the partnership is voluntary and contractual. An agreement from which relationship of Partnership arises may be express. It may also be implied from the act done by partners and from a consistent course of conduct being followed, showing mutual understanding between them. It may be oral or in writing.
3. **Business:** In this context, we will consider two propositions. First, there must exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains" which leads to the formation of partnership. Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.
4. **Agreement to share profits:** The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element. It is open to one or more partners to agree to share all the losses. However, in the event of losses, unless agreed otherwise, these must be borne in the profit-sharing ratio.
5. **Business carried on by all or any of them acting for all:** The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

- (b) Section 17 of Indian Contract Act, 1872 defines 'Fraud'. According to section, "Fraud" means and includes any of the following acts committed by a party to a contract or by his agent with intent to deceive or to induce a person to enter into the contract:

- (i) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (ii) the active concealment of a fact by one having knowledge or belief of the fact;

- (iii) a promise made without any intention of performing it;
- (iv) any other act fitted to deceive;
- (v) any such act or omission as the law specially declares to be fraudulent.

It was also explained that mere silence is not fraud. Silence amounts to fraud where (a) there is a duty to speak or (b) where silence is equivalent to speech.

On the basis of provisions of Section 17 and the facts given above, it was not the duty of salesman to inform Mr. Kapil about his mistake. Hence, there was no fraud and Kapil was not eligible to file suit for fraud against departmental store under Indian Contract Act, 1872.

4. (a) The right against the buyer are as follows:

1. Suit for price (Section 55 of the Sale of Goods Act, 1930)

- (a) Where under a contract of sale, the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1)]
- (b) Where under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2)].

2. Suit for damages for non-acceptance (Section 56): Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

3. Repudiation of contract before due date (Section 60): Where the buyer repudiates the contract before the date of delivery, the seller may treat the contract as rescinded and sue damages for the breach. This is known as the 'rule of anticipatory breach of contract'.

4. Suit for interest [Section 61]: Where there is specific agreement between the seller and the buyer as to interest on the price of the goods from the date on which payment becomes due, the seller may recover interest from the buyer. If, however, there is no specific agreement to this effect, the seller may charge interest on the price when it becomes due from such day as he may notify to the buyer.

In the absence of a contract to the contrary, the Court may award interest to the seller in a suit by him at such rate as it thinks fit on the amount of the price from the date of the tender of the goods or from the date on which the price was payable.

(b) According to Section 29 of the Indian Partnership Act, 1932,

- (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.
- (2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

In the light of facts of the question and provision of law:

- (i) Yes, Mr. M can validly transfer his interest in the firm by way of sale.

(ii) On the retirement of the transferring partner (Mr. M), the transferee (Mr. Z) will be entitled, against the remaining partners:

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution.

So, in this case on Mr. M's retirement, Mr. Z would be entitled to receive the value of Mr. M's share to the extent of Rs. 6 crore in the firm's assets.

5. (a) The given question deals with the rule related to transfer of title of goods. Section 27 of the Sale of Goods Act, 1930 specifies the general rule "No man can sell the goods and give a good title unless he is the owner of the goods". The Latin maxim "NEMO DET QUOD NON HABET". However, there are certain exceptions to this rule. One of the exceptions is given in Section 30 (1) of Sale of Goods Act, 1930 wherein the sale by seller in possession of goods even after sale is made, is held to be valid. If the following conditions are satisfied, then it amounts to a valid sale although the seller is no more the owner of goods after sale.

- (i) A seller has possession of goods after sale
- (ii) with the consent of the other party (i.e. buyer)
- (iii) the seller sells goods (already sold) to a new buyer
- (iv) the new buyer acts in good faith
- (v) The new buyer has no knowledge that the seller has no authority to sell.

In the given question, the seller Sohan has agreed to sell the goods to Binod, but delivery of the goods is still pending. Hence Sohan is in possession of the goods and this is with the consent of buyer i.e. Binod. Now Sohan sells those goods to Vikram, the new buyer. Vikram is buying the goods in good faith and also has no knowledge that Sohan is no longer the owner of goods.

Since all the above conditions given under Section 30 (1) of Sale of Goods Act, 1930 are satisfied, therefore the sale made by Sohan to Vikram is a valid sale even if Sohan is no longer the owner of goods.

(b) **Doctrine of ultra vires:** The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

An act which is ultra vires the company being void, cannot be ratified even by the unanimous consent of all the shareholders of the company.

Hence in the given case, ABC Limited cannot enter into a contract outside the purview of its object clause of memorandum of association as it becomes ultra vires and thus null and void.

6. (a) According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) subsequent impossibility.

Subsequent impossibility is also known as Supervening impossibility i.e. becomes impossible after entering into contract. When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility.

Example: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

Effect of impossibility: The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

- (b) **Mode of Settlement of partnership accounts:** As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the firm to third parties;
 - (b) in paying to each partner rateably what is due to him from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital; and
 - (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

- (c) **Separate Legal Entity:** 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 leading case law of Saloman Vs Saloman and Company Limited, laid the foundation of concept of corporate veil or independent corporate personality. A company is a person distinct and separate from its members.

Based on the above discussion and provisions, Mr. Raj was entitled to the assets of the company as he was a secured creditor of the company and the contention of the creditors that Mr. Raj and the company are one and same person is wrong.

SECTION-B: BUSINESS CORRESPONDENCE AND REPORTING

ANSWER

1. (a) Reading Comprehension

- (1) According to the author, the worst tragedy is that the concerned human population has taken the current state of affairs as granted. According to them, rural life cannot be ameliorated or altered.
- (2) According to the passage, rural development was an inseparable part of the Independence movement. Leaders like Gandhi ji realized quite well that real India lived in her stagnating villages.
- (3) Option b
- (4) Ignorance, ill health and poverty have become synonyms of rural life in the un developed and underdeveloped countries.
- (5) The word 'affluent' refers to the rich and the wealthy people.

(b) Title: The problem of disguised unemployment

- (1) Too much employment in agriculture
 - 1.1 41% Indian ppln in agric.
 - 1.2 More the ppl, less the per capita income
 - 1.3 Need to shift to hmn resources to othr activities
 - 1.4 Make rural sec self suffcnt
- (2) Need to focus on othr skills
 - 2.1 Handicrafts, food processing, MSME sec; need to be grown
 - 2.2 Hnd made toys, bamboo prdcts, hnd made soaps in demand
 - 2.3 Large scale manfctrng, sply chn mgmnt will lead to reductn in cost
- (3) Eastern India: hub for agricultural and industrial labr
 - 3.1 Need for reverse migrtn
 - 3.2 Need for techn. intrventn
 - 3.3 Govt. needs to promote coop frmng and consoldt land hldngs

Key:

Ppln: population

Agric: agriculture

Ppl: people

Hmn: human

Othr: other

sec: sector

Suffcnt: sufficient

Hnd: hand

Prdcts: products

Manfctrng: manufacturing

Sply chn: supply chain

Mgmt: management

Reductn: reduction

Lbr: labour

Migrtn: migration

Techn: technological

Intrvntn: intervention

coop: cooperative

Frmng: farming

Consoldt: consolidate

Hldngs: holdings

Summary:

With nearly 41 % people employed in agriculture, there seems to be disguised unemployment where too many people are filling too few jobs. The focus needs to shift towards other skilled activities like making wooden toys, handmade soaps, bamboos products which have a domestic as well international demand. Moreover, eastern India having a concentration of agricultural and industrial labour, there should be plans of having reverse migrations and an intervention of technology. Last, but not the least government should promote cooperative farming and consolidate land holdings for the betterment of the region.

2. (a) When the right message is conveyed at the right time to the right person in a clear and coherent manner, it is said to be Effective communication.

Four characteristics

Clarity: The message written or spoken should be stated clearly. Communication should not have ambiguity.

Conciseness: Brevity is the essence of communication. Message conveyed should be short, brief and to the point.

Coherence: communication should involve a logical flow of ideas, where there is a smooth shift from one idea to another.

Completeness: Good communication conveys the whole idea, without leaving gaps. All relevant information should be given at the same time to make it complete.

- (b) (i) Option 3
(ii) Option 1
(iii) The lawyer ordered the accused to speak the truth

- (c) **Think before you speak! Or Mind your words!**

Speech can be a blessing or a curse depending on how we use it. A wrong choice of word can make a foe instead of a friend. A strong vocabulary might imply something different to our listener based on classes and knowledge of words. Hence, speech is a special gift to be used wisely. Only a fool would use words alike in front of all men and in all situations.

3. (a) There are multiple barriers in the communication process.

Physical Barriers, which are result of our surroundings. Like noise, lack of infrastructure, old technologies.

Language Barriers which result from lack of knowledge of a particular language. It leads to unfamiliar expressions, ambiguous words.

Emotional Barriers which result from feelings of anger, fear of criticism, ridicule, distrust, jealousy etc.

Cultural Barriers, which result from diversity in culture, traditions where gestures and expressions have different meanings in different cultures and communities.

- (b) (i) Option 3
(ii) Option 2
(iii) Mother asked Raju if he would come to the shop with her.
- (c) **Report writing**

Vidyamandir School hosts literary festival

By Abhishek Verma

Vidyamandir School, New Delhi hosted its third literary festival on 15th March, 2022. The Chief Guest for the event was famous writer Ms Arundhati Roy. The event started by lightning of the lamp and a beautiful Saraswati Vandana sung by the school students.

The festival included various events like debates, declamations, poetry recitation and storytelling. Ten other schools from the city participated in this event and students displayed their talent and expertise.

The storytelling event was a hit amongst the jury and the audience. It involved use of creative, handmade props, voice modulations and background music and a lot of humour. The other event which got adrenaline rushing was the debate competition. The strong vocabulary, the emphatic phrases swayed the audience and earned the appreciation of the judges.

Ms. Roy gave an inspiring speech and thanked for letting her be a part of this creative event. The event ended with a vote of thanks given by the school Principal and the Head girl.

4. (a) A communication that involves certain rules, principles and conventions and is primarily used in offices, businesses is known as Formal Communication.

Its three types:

- (1) Vertical: Information flows upwards and downwards as per its importance. Decisions are made at the top level while instructions are passed to the lower levels
 - (2) Horizontal: Communication between two employees at the same level , in an organization.
 - (3) Diagonal: Cross functional communication between employees at different levels of the organizational hierarchy.
- (b) (i) Rashmi said that those grapes look sweet.
(ii) The people will crown Raja Rao the king
(iii) Will this offer be accepted by you?
- (c) Circular No. XXV

Agenda for the MD's visit

14th March, 2022

For all HR personnel

This is to inform you that all employees of the Human Resource division have to be present for a meeting today at 7.30 pm, in the Seminar Room (2nd floor). This is in regard with the visit

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of our Managing Director (MD) in the coming week. We would appreciate suggestions to plan his itinerary and discuss the agendas to be shared with him.

Attendance is compulsory.

Amita Khurana,
Head, HR
Surya Pvt. Ltd

OR

Email

To: ajaykhanna@abc.com

CC/BCC: rohit@aztectechnologies.com

Sub: Appointment Letter for 'Associate Consultant'

Dear Mr. Ajay,

We are pleased to inform you that you have been selected for the post of 'Associate Consultant' at Aztec Technologies.

We request you to collect your appointment letter in three days of receiving this email. It would be advisable to bring along a few documents mentioned in the attachment. (Originals only). In case you accept the offer, please write a short acceptance reply to confirm the same. For better understanding of the job responsibilities, we have planned an Orientation Programme on 25th March, 2022 at the Head Office. Details will be shared soon.

Our HR team would get in touch with you for further details. Looking forward to have you on board!

Regards,

Rashmi,

Aztec Technologies

5. (a) The communication pattern that follows the chain network from senior to junior is known as the Chain of Command. The communication starts at the top, like from the CEO, and makes its way down to different levels of employees. It involves organizational hierarchy.
- (b) (i) Option 2
(ii) Option 4
(iii) Mary is being followed by a lamb.
(iv) Option 3
- (c) Vijaywada
13th April, 2022

Mr. AABC,
Manager,
Accounts Department
Agro Associates

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Dear Sir/Madam,

I would like to take the opportunity to thank you for giving us yet another opportunity to serve your demands for machinery and other equipment. It has always been a pleasure working your organization.

I would like to inform you that the 100 units of machinery ordered, will be delivered as per the mutually decided date. We would also provide a free service for the next one year, taking care of any product damage.

The order dated 1st March, 2022 includes:

- (1) Trolley pump (30 units)
- (2) Speed drill (25 units)
- (3) Mini sprayer (25 units)
- (4) Trailer sprayer (20 units)

For any other query regarding the machinery ordered and its functioning, please feel free to contact me. My team would be happy to serve you better each time. You can also call at our toll free number 1800000010 for any clarifications.

Thanking you!

Yours Sincerely,

Krishna,

Sales Head

New Zone Machinery,

Hyderabad