

EXAMINATION OF ARTICLE CLERKS

PAPER V

COMMERCIAL LAWS

Saturday 9th April, 2022

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

TOTAL MARKS – 100

Note: Answers should be reasoned and where possible supported by provisions of law and case law.

SECTION – I

THE INDIAN CONTRACT ACT, 1872

1. Write a brief note on the doctrine of 'Privity of Contract' and the exceptions to the doctrine. **5 Marks**

2. Write short notes on any three of the following: **12 Marks**
 - i. Rules regarding contingent contracts.
 - ii. Restitution.
 - iii. Difference between an Indemnity and a Guarantee
 - iv. Duties of a Bailee
 - v. Creation of an Agency

3. The Royal Western India Turf Club was to host the Derby from 10th to 12th October, 2021. As they were expecting higher than usual footfall, RWITC contracted with Parking Solutions LLP to build a new car park which entailed resurfacing widening of the access road leading to the area allotted for the new car park. The new car park was to be completed by 1st October 2021. A deposit of Rs. 15,00,000/- was payable by RWITC on 8th August, 2021 and the balance of Rs. 27,00,000/- was payable on 1st October 2021. Due to torrential rains in the 3rd week of September, 2021, a sinkhole formed in the area allotted for the new car park causing damage to the machinery of Parking Solutions LLP. The area is no longer suitable for any development. As the racecourse was also damaged, the Derby was canceled and will not be rescheduled. Parking Solutions are claiming the balance of the monies incurred towards labour and work done amounting to Rs. 18,00,000/- and an additional Rs. 6,00,000/- towards their machinery which was damaged. Explain the relevant law to RWITC and advise them as to their liability to Parking Solutions LLP. **5 Marks**

4. Jignesh joins the Back2Basics movement based in Shangri-La who believe in living without the negative influences of technology. Jignesh decides to move to Shangri-La and places the following advertisement in the local new bulletin for his Honda Civic car. 'FOR SALE'- Honda Civic in pristine condition will be sold to the first person who sends notice in writing that they wish to buy **5 Marks**

it for Rs. 3,00,000/- to the following address: Rajkiran Mansion, Altamount Road, Mumbai.

On Saturday evening, Ramesh, a newly qualified driver, posts a letter stating that he wants to buy Jignesh's car on Wednesday morning. On Monday morning, Suresh a friend of Jignesh sends him an email stating that he is willing to pay Rs. 3,00,000/- for the car. Jignesh never receives the email, since as a member of the Back2Basics movement he no longer uses computers or mobile phones. On Tuesday evening Jignesh meets his friend Hitesh for dinner and over the course of the meal, Jignesh promises to sell the car to Hitesh for Rs. 2,50,000/-.

Advise Jignesh as to whether he is contractually bound to Ramesh, Suresh or Hitesh.

SECTION – II

THE INDIAN PARTNERSHIP ACT, 1932

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

5. Sunny and Azhar decide to start a cricket coaching academy. They come to you for advice on whether it would be preferable to form a Partnership under the 1932 Act or a Limited Liability Partnership. What advise would you give them. **5 Marks**
6. Sita and Geeta enter into a partnership. They agree that that if any one of them died, the firm would not be dissolved but the eldest child of the deceased partner would be taken as partner in the firm. Sita died in the year 2020. Her daughter Rita was taken on as a partner. The Income Tax authorities refuse assess the income as that of a partnership firm on the ground that on the death of Sita, firm was dissolved and Rita and Geeta cannot be treated as partners and the Income would be liable in the hands of Geeta as a Sole Proprietor. What advise would you give to Geeta and Rita? **3 Marks**
7. Amar, Akbar and Anthony are partners in the Firm. Amar retires from the Firm and the retirement agreement provides that all the assets and liabilities of the Firm will belong to Akbar and Anthony. Mocambo, a creditor of the Firm sues Amar, Akbar and Anthony. Amar denies any liability relying on the Retirement Agreement. Advise Mocambo. **3 Marks**
8. Write short notes on any **three** of the following: **15 Marks**
- i. Designated Partner.
 - ii. Winding-up and Dissolution of a Limited Liability Partnership.
 - iii. Relation of Partners to third parties.
 - iv. Dissolution of a partnership firm.
 - v. Duties of a Partner.

SECTION – III

THE NEGOTIABLE INSTRUMENTS ACT, 1881

9. Comment on the maxim 'Once a bearer instruments always a bearer instrument'. **4 Marks**
10. Ram signs, as maker, a blank stamped paper and gives it to Laxman, and authorises him to fill it as a note for Rs. 50,00/- to secure an advance which Bharat is to make to Laxman. Laxman fraudulently fills it up as a note for Rs.2,00,000/- payable to Bharat who has in good faith advanced Rs. 2,00,000/-. Is Bharat entitled to recover the amount, and if so, up to what extent? **3 Marks**
11. Write a short note on Notice of Dishonour. **5 Marks**
12. Write short notes on any three of the following: **12 Marks**
- i. Incohere stamped Instruments.
 - ii. Capacity to make negotiable instruments.
 - iii. Presentation for payment.
 - iv. Dishonour of cheques.
 - v. Noting and Protest.

SECTION – IV

SALE OF GOODS ACT, 1930

13. Bheem was shopping in the super market, he picked up a bottle of an aerated drink from a shelf with the intention to buy it. While he has examining it, the bottle exploded in his hand and injured him. Bheem sued both the management of super market and the company which had bottled the drink to recover damages for breach of condition arising from the sale of good. Will he succeed? **3 Marks**
14. Write a brief note on breach of contract under the sale of goods Act. **5 Marks**
15. Write short notes on any three of the following: **15 Marks**
- i. Time an essence of a contract of sale.
 - ii. Implied conditions and warranties.
 - iii. Caveat Emptor.
 - iv. Rules as to sale by auction.
 - v. Difference between sale and bailment.
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