

EXAMINATION OF ARTICLE CLERKS

PAPER V

COMMERCIAL LAWS

Thursday 16<sup>th</sup> October, 2019

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

TOTAL MARKS – 100

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General Instructions:

- (1) Please answer all questions to the point.
- (2) Answers should be reasoned and where possible supported by case law.

SECTION – I

THE INDIAN CONTRACT ACT, 1872

1. Would an Agreement with an outgoing partner not to carry on a competing business for a period of 2 years amount to an agreement in restraint of trade? **3 Marks**
  
2. Would the non-disclosure of a previous insurance policy, though mandated, be a valid ground for repudiation of the claim even though there is no prohibition in law from a person holding any number of life insurance policies from different insurers? Would the non-disclosure amount to fraud? **4 Marks**
  
3. Would a settlement Agreement, entered into pursuant to disputes having arisen in a Works Contract, be deemed to super cede the Works Contract for all purposes? **3 Marks**
  
4. Write short notes on any three of the following: **15 Marks**
  - i. Termination of agency.
  - ii. Frustration of contract.
  - iii. Pawnee's rights.
  - iv. Quasi Contracts.

## SECTION – II

## THE INDIAN PARTNERSHIP ACT, 1932

5. Mr. X files an application for appointment of Arbitrator against Mr. Y. The application is founded on the allegations inter alia that there was a partnership between the Mr. X. and Mr. Y. However, disputes arose between the partners of this firm, which resulted in its dissolution. Clause 11 of the Partnership Deed provides for resolution of disputes arising out of the partnership between the parties by an Arbitrator. Mr. X, therefore, prayed that an Arbitrator be appointed in terms of Clause 11 of the Partnership Deed for deciding the disputes which have arisen between the parties relating to the partnership. Mr. Y has raised a preliminary objection contending therein that since the partnership in question on which the application is founded was an "unregistered partnership", therefore, in the light of the bar contained Under Section 69(3) of the Partnership Act, the application filed by the Respondent is not maintainable, therefore, it is liable to be dismissed. Is Mr. Y's contention correct? Give reasons. **5 Marks**
6. Does the filing of a suit for dissolution, where the partnership is at will, amount to giving of a notice of dissolution within the meaning of Section 43 of the Partnership Act. **5 Marks**
7. Write short notes on any three of the following: **15 Marks**
- i. Duties of a Partner.
  - i. Difference between an LLP and a Company.
  - ii. The rights of a buyer and seller of goodwill of a partnership firm.
  - iii. Can a Partner in an LLP transfer his economic rights?

## SECTION – III

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

8. Mr. X was carrying on business of dealing in building materials. Mr. Y, a Principal in an educational institution came in contact with Mr. X through common friends. Mr. X allowed Mr. Y to purchase building materials worth of Rs. 1,65,400/- for the repairs of the School. Thereafter, there was no response from Mr. Y for payment of cost of building material. On Mr. X insisting on payment, Mr. Y issued a cheque of Rs. 1,65,400/- in favour of Mr. X which was dishonoured for lack of funds. The statutory notice was issued but there was no response from Mr. Y. Mr. X initiated penal action against Mr. Y under Section 138 the Act. The learned Magistrate issued process against respondent-accused. The learned Magistrate recorded the particulars of offence by explaining the accusation to the accused and the matter was kept for adducing the evidence on behalf of complainant. On 3 occasions Applications were made for adjournment of the proceedings by Advocate for the Complainant. However, there was no progress into the matter for evidence on behalf of the complainant. Eventually, the Magistrate to dismissed the complaint for want of prosecution. Mr. X now comes to you and states that his earlier lawyer was negligent and wants you to file an appeal. What advice would you give Mr. X? **5 Marks**
9. Discuss whether an action under Section 138 of the Act can fail if the Accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability. **5 Marks**
10. Write short notes on any three of the following: **15 Marks**
- i. Classification of Instruments.
  - ii. Presumptions as to Negotiable Instruments.
  - iii. Holder and Holder in due course.
  - iv. Inchoate stamped Instruments.

## SECTION – IV

## SALE OF GOODS ACT, 1930

11. Mr. X places an order for delivery of 5000 cases (each case having 20 packets of 500 gm) of butter from Mumbai Maska Co. The butter is to be delivered to Mr. X's warehouse in Pune within a week. Mr. X pays in advance the entire cost of the 5000 cases. The air conditioning unit on the truck delivering the butter fails in transit as a result 2000 cases of butter are delivered in a deteriorated condition. What advice would you give Mr. X? **5 Marks**
12. Answer in True or False. Give one bullet point reason for your answer. **5 Marks**
- i. A contract of sale may be implied by the conduct of parties.
  - ii. Where a price has not been fixed in a contract, the buyer shall pay the seller a price the buyer deems reasonable.
  - iii. Stipulations as to time of payment are deemed to be the essence of a contract of sale.
  - iv. The buyer is deemed to have accepted the goods when the goods are delivered to him.
  - v. An unpaid seller of goods has the right of resuming possession of goods in transit if he so desires.
13. Write short notes on any 3 of the following: **15 Marks**
- i. Conditions and warranties.
  - ii. Reservation of right of disposal.
  - iii. Rights of an unpaid seller.
  - iv. Duties of the seller.
  - v. Remedy for breach of warranty.
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