

EXAMINATION OF ARTICLE CLERKS

PAPER V

COMMERCIAL LAWS

Wednesday 16th November, 2022

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

TOTAL MARKS – 100

General Instructions:

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 'supervening impossibility' and the exceptions to the doctrine. **5 Marks**

2. Write short notes on any three of the following: **12 Marks**
 - i. Distinction between fraud and misrepresentation.
 - ii. Difference between Coercion and Undue influence.
 - iii. Consequences of absence of consent and free consent.
 - iv. Rights and liabilities of an undisclosed principal of an agent.

3. Mr. X is a Master Craftsman in Colaba, Mumbai. He takes on Mr. Y as his apprentice for a period of 3 years. The apprenticeship agreement provides, inter alia, that Mr. Y shall not after leaving the employ of Mr. X, work in Mumbai for a period of 3 years. The Agreement also provides that Mr. Y shall not use the trade secrets of Mr. X including the proprietary processes of Mr. X and the unique raw materials sourced Mr. X from his dealers. Mr. Y after completion of his internship, joins the employ of ABC Ltd., a furniture company based out of Dadar, Mumbai. Mr. X is informed by his dealer that Mr Y had approached him in respect of similar materials as ordered by Mr. X. On making inquiries, Mr. X learns that ABC Ltd. have started manufacturing furniture using his secret and proprietary processes. What are the remedies available to Mr. X, if any. **4 Marks**

4. Mr. A receives a parcel containing diwali sweets from Wefast by mistake. Mr. A not realising that the sweets were not meant for him eats the sweets thinking that a well wisher has sent him a diwali gift. State the remedy(s) available to the true owner of the sweets. **4 Marks**

SECTION – II

THE INDIAN PARTNERSHIP ACT, 1932

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

5. Rohit is a partner of M/s. Fully Funda. He borrows money from Virat and executes a promissory note in the name of the Firm without any authority. What remedy does Virat have if Rohit fails to return his money? What action can the Firm take against Rohit? **5 Marks**
6. Answer in Yes or No. Give one bullet point in support of your answer. **5 Marks**
- i. Can a partner be required to retire on the ground of his or her age?
 - ii. Is a partner entitled to parental leave?
 - iii. Is a 'salaried partner' a partner in the legal sense?
 - iv. Will a new partner be liable for the existing debts of the partnership?
 - v. Are all the partners equally entitled to participate in decisions concerning the Firm?
7. M/s. Speciality Chemicals deals in the procurement and selling of a particular chemical known to have carcinogenic properties. A new law bans the trading of that particular chemical. Advise the partners of M/s. Speciality Chemicals. **3 Marks**
8. Write short notes on any **three** of the following: **12 Marks**
- i. Partner by estoppel.
 - ii. Consequences on the dissolution of a LLP.
 - iii. Legal consequences of admission or retirement of a partner.
 - iv. True test of Partnership.
 - v. Duties of a Designated Partner.

SECTION – III

THE NEGOTIABLE INSTRUMENTS ACT, 1881

9. Answer whether True or False. Give one bullet point in support of your answer. **5 Marks**
- i. A Bill of Exchange is a conditional promise to pay.
 - ii. Currency notes are not considered as Negotiable Instruments under the act.
 - iii. A bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand is called a promissory note.

- iv. If a Minor draws, indorses, delivers and negotiates a Negotiable Instruments, it binds the minor and the drawee.
- v. In case of an accepted bill, the liability of drawee is primary and unconditional.
10. Ram files a suit a civil suit against Laxman for declaration that Laxman was not entitled to receive any amount from him in respect of an instrument drawn by him. Ram prays to the court to issue an interlocutory injunction restraining Laxman as as the drawee of the instrument from proceeding under Section 138. Can the court grant such an injunction? **3 Marks**
11. Write a short note on the procedure to be followed on the dishonour of a cheque. **5 Marks**
12. Write short notes on any three of the following” **12 Marks**
- i. Delivery.
 - ii. Summary trial.
 - iii. Effect of death of complainant during trial.
 - iv. Effect of subsequent payment.

SECTION – IV

SALE OF GOODS ACT, 1930

13. Can the following be the subject matter of sale under the Act? **3 Marks**
- i. Electricity.
 - ii. Actionable claim
 - iii. Standing timber.
14. Discuss the statement ‘once a condition is always condition’. How does condition differ from warranty under the Act? **4 Marks**
15. Nifty Cars was entrusted with a car by Mr. X to sell the same for a price of Rs. 5 Lakh. Nifty Cars sold the car to Mr. Y for Rs. 4 Lakh and misappropriated the remaining proceeds. Does Mr. Y acquire good title of the car under the Act? Why? **3 Marks**

16. Write short notes on any three of the following: **15 Marks**
- i. Doctrine of 'Nemo dat quod non habet'.
 - ii. Condition as to title.
 - iii. Caveat Emptor.
 - iv. Rules relating to the passing of property of unspecific goods.
 - v. Distinction between lien and stoppage in transit.
