

EXAMINATION OF ARTICLE CLERKS

PAPER V

COMMERCIAL LAWS

Thursday 2nd May, 2019

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

TOTAL MARKS – 100

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. Indian Railways entered into a contract with Hindustan Ispat Ltd. for purchase of 5 Lakh rails and 15 Lakh railroad ties. The Contract limited liquidated damages to the amount of 12% of the purchase value in the case of a breach. Hindustan Ispat Ltd. failed to discharge its obligations under the contract by reason of which Indian Railways suffered damage. Indian Railways, owing to its claim for damages deducted monies from the Invoices raised by Hindustan Ispat Ltd. in excess of 12% of the purchase value. Indian Railways state that they are entitled to deduct the monies in excess of 12% under quantum meruit. Hindustan Ispat Ltd. come to you for your opinion. What advice would you give them. **6 Marks**
2. A shopkeeper displayed a drone in the window of the shop with words 'Latest Artificial Intelligence Drones'. The Shopkeeper was charged with offering for sale a drone prohibited under the Drone Policy. Is the Shopkeeper guilty? Why? **2 Marks**
3. Worldwide, Inc. a MNC assigns its registered intellectual property rights in India to its Indian subsidiary, Desi Pvt. Ltd., for a consideration of Rs. 100/-. Is this a valid consideration? Give reasons. **3 Marks**
4. Mr. A is desirous of entering into a manufacturing and distribution Agreement with Mr. B. As Mr. B is going to be travelling during the month of May, he gives his in principle approval to Mr. A subject to the formal manufacturing agreement being drawn up on his return in June. Do Mr. A and Mr. B have a concluded contract? Give reasons. **2 Marks**

5. Write short notes on any **three** of the following: **12 Marks**
- i. Voidable contracts.
 - ii. Anticipatory Breach versus. Actual Breach
 - iii. Effect of Agency on contracts with third persons.
 - iv. Discharge of Surety.

SECTION – II

THE INDIAN PARTNERSHIP ACT, 1932

6. Critically examine the following: **10 Marks**
- i. Does an Arbitrator have the jurisdiction to decide the dissolution of a firm under Section 44(g) of the Act?
 - ii. Does Section 69(2) of the Act bar the filing of a Suit based on the dishonour of a cheque?
7. Tom, Dick and Harry are the partners of M/s. TDH a firm registered in the year 2010. In the year 2015 Tom passes away. Thereafter, in the year 2017 Dick and Harry induct Richard as a Partner. The changes in the constitution of the firm have not been brought on record with The Registrar of Firms. M/s. TDH now want to sue Mr. A. Can they do so? Give reasons. **3 Marks**

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

8. Write short notes on any **three** of the following: **12 Marks**
- i. Designated Partners.
 - ii. Cessation of a partnership interest.
 - iii. Extent of liability of a LLP and its partners.
 - iv. Dissolution of a LLP.

SECTION – III

THE NEGOTIABLE INSTRUMENTS ACT, 1881

9. Which of the following are valid Promissory Notes? Provide reasons for your answers in one bullet point. **3 Marks**
- i. "I promise to pay B Rs.25,000/- and all other sums which shall be due to him".
 - ii. Mr. A promises to pay Mr. B, his partner, a sum of Rs.10,000 in the event of Mr. B's retirement from partnership firm.
 - iii. Mr. C promises to pay Ms. D, a sum of Rs.5,000, fifteen days after the death of Mr. E.
10. Mr. F signs, as maker, a blank stamped paper and gives it to Mr. G, and authorises him to fill it as a note for Rs. 50,000/- to secure an advance which Mr. H is to make to Mr. G. Mr. G fraudulently fills it up as a note for Rs.2,00,000/-, payable to Mr. H, who has in good faith advanced Rs. 2,00,000/. Can Mr. H enforce the Instrument and if so, up to what extent? **2 Marks**
11. Which of the following alterations of a negotiable instrument will render the instrument void? Provide reasons for your answers in one bullet point. **5 Marks**
- i. The holder of a bill alters the date of the instrument to accelerate or postpone the time of payment.
 - ii. The drawer of a negotiable instrument draws a bill but forgets to write the words 'or order'. Subsequently, the holder of the instrument inserts these words.
 - iii. A bill payable three months after date is altered into a bill payable three months after sight.
 - iv. A bill was dated 2018 instead of 2019 and' subsequently the agent of the drawer corrected the mistake.
 - v. A bill is accepted payable at the Union Bank, and the holder,

without the consent of the acceptor, scores out the name of Central Bank of India and inserts that of Union Bank.

12. Write short notes on any three of the following" **15 Marks**
- i. Person competent to file complaint under Section 142.
 - ii. Protest.
 - iii. Discharge from Liability.
 - iv. Effect of cheque returned for structural defect.

SECTION – IV

SALE OF GOODS ACT, 1930

13. Differentiate between Condition and Warranty. When can a breach of condition be treated as a breach of warranty? **5 Marks**
14. Explain the rules of Auction under the Act. **5 Marks**
15. What is meant by the term "delivery"? Explain the rules regarding valid delivery of goods. **8 Marks**
16. Pestkill Pvt. Ltd. sold a certain number of fogging machines used for killing mosquitoes to the Municipal Corporation of Greater Mumbai (MCGM) payment for which had to be made within one week of delivery. The MCGM Respondents did not pay within one week and in fact did not communicate with Pestkill Pvt. Ltd. After 6 months of using the machine, the MCGM communicated with Pestkill Pvt. Ltd., but only to complain about the fogging machines' inefficiency. They claimed that the machines were defective and intended to return the machines. What advice would you give Pestkill Pvt. Ltd. **7 Marks**
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