

EXAMINATION OF ARTICLED CLERKS**PAPER V****MODERN COMMERCIAL LAWS**

FRIDAY, 25TH NOVEMBER 2016

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 if possible supported by case law.

Marks**SECTION-I****THE INDIAN CONTRACT ACT, 1872**

1. Answer any *one* of the following :— 10
- (a) Briefly discuss the concept of contingent contracts. Is an Agreement void if contingent on an impossible event ? Would it make any difference if the impossibility of the event is known to the parties to the agreement at the time when it was made ?
- OR
- (b) (i) Briefly discuss the general principles of the law of agency.
 (ii) A power of attorney is executed by Mr. X authorizing Mr. Y to deal with an immovable property (" Property ") belonging to Mr. X. The Power of attorney records that it has been granted for consideration of ₹ 5 Lakhs paid by Mr. Y. The Power of attorney stipulates that Mr. X is to be paid ₹ 30 crores only from and out of the sale proceeds. Mr. X thereafter dies. After Mr. X's demise Mr. Y exercises the authority under the power of attorney and sells the Property for a consideration of ₹ 30 crores.
- (a) Is the transaction of sale valid ?
 (b) Would it make any difference if the Property was sold for ₹ 40 crores ?
 (c) If the power of attorney had stipulated that it is irrevocable, would that have any bearing on the exercise of authority by Mr. Y in the manner aforesaid ?
 (d) If Mr. Y was only authorized to appropriate from and out of the sale consideration for the Property a fixed percentage commission of the sale price and was required to pay over the balance to Mr. X, would the transaction of sale be valid ?
2. TBT Pvt. Ltd. is the successful bidder for a tender issued by the State of Maharashtra. TBT Pvt. Ltd. is required to furnish a bank guarantee as security for performance of the contract. The terms of the bank guarantee stipulate that "...unless a demand or claim is made within 3 months from the date on which such demand or claim can be made under the contract, all your rights under the said guarantee shall be forfeited and stand extinguished and the bank shall be relieved and discharged from all liabilities thereunder...". 5

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Would such a stipulation be valid if the guarantee was executed on

- (a) 1st April 1995
- (b) 1st April 2005;
- (c) 1st April 2016.

3. Short notes on any *two* of the following :—

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- (a) Doctrine of frustration.
- (b) Express and implied terms in a contract. Give two types of implied terms.
- (c) Responsibility of finder of goods.
- (d) What is a continuing guarantee.

4. A voluntary retirement scheme ("VRS") was promulgated by a company for specified employees. The VRS was open for a specified period. During this period all the eligible employees who desired to opt for VRS were required to file a prescribed form selecting one of the three VRS options provided under the scheme. After the closure of the scheme, the management of the company would have a period of 2 months to finalize the scheme. The management of the company reserved to itself, the absolute discretion to either accept or reject the application for VRS made by any eligible employee. Several employees volunteered for VRS and subsequently sought to withdraw their applications before the scheme was closed. The company nevertheless proceeded to accept the applications and process the applications which had been sought to be withdrawn.

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- (a) Is VRS as described above an offer or an invitation to offer ?
- (b) Would the employees be legally entitled to withdraw their applications for VRS before (i) closure of the scheme, and (ii) after closure of the scheme ?
- (c) Would your answer be different if (i) the scheme provided that an application once made could not be withdrawn (ii) if there was a prescribed period within which the offer had to be withdrawn ?

SECTION-II

THE INDIAN PARTNERSHIP ACT, 1932

1. Answer any *one* of the following :—

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- (a) Explain briefly with illustrations.—
 - (i) "act of firm",
 - (ii) "implied authority of partner"; and
 - (iii) "extension and restriction of partner's implied authority".

OR

- (b) M/s. XYZ an unregistered partnership firm enters into a contract for the purchase of goods from ABC Pvt. Ltd. The terms of purchase require the entire consideration for the goods to be paid in advance. The contract contains an arbitration clause. The entire consideration is paid by M/s. XYZ in accordance with the terms of the contract. ABC Pvt. Ltd. defaults in delivery of the goods.

M/s. XYZ issues a notice invoking arbitration. The arbitrator is appointed. An objection is raised by ABC Pvt. Ltd. stating that the arbitration is barred under law.

- (i) Is the contention raised by ABC Pvt. Ltd. valid ?
- (ii) If during the course of the arbitration proceedings M/s. XYZ were to get itself registered would that have any bearing on the issue raised by ABC Pvt. Ltd ?
- (iii) Would it make any difference if the arbitration had commenced in 1986 ?

2. Answer any *three* of the following :—

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- (a) Mr. X, Mr. Y and Mr. Z enter into a partnership to conduct business for the sale and purchase of cotton. Mr. X owns office premises which are vacant and unused. The partnership deed only provides that the business of the partnership is to be conducted from the aforesaid office premises. On dissolution of the partnership Mr. Y and Mr. Z claim that the office premises are partnership property and an asset of the firm. Would the contention of Mr. Y and Mr. Z be correct ? Give reasons to supplement your answer.
- (b) What are the rights of an outgoing partner and what are the restrictions upon him carrying on similar business ? Would the same restrictions apply to a partner of a limited liability partnership ?
- (c) Insolvency of a Partner.
- (d) Difference between a partnership firm and a company.

SECTION-III

THE SALE OF GOODS ACT, 1930

1. Answer any *one* of the following :—

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- (a) Discuss the remedies available to the buyer and the seller for breach of contract by both of them with one example for each.

OR

Describe delivery and effect of part delivery. Explain the rules of delivery and delivery of wrong quantity.

2. Short notes on any *two* of the following :—

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- (a) Auction sale
- (b) What is the difference between a condition and a warranty ?
- (c) What are goods ? Would a lottery ticket be goods ? Would intellectual property be goods ?

SECTION-IV

THE NEGOTIABLE INSTRUMENTS ACT, 1881

1. Answer any *one* of the following :—

- (a) Specify the necessary averments required in a complaint before a person can be subjected to criminal process under the Act? Draft the necessary averments.

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OR

Who can be sued under section 141 of the Act in respect of offences by companies? Can an Advocate be sued as an officer of the company under section 141? What principles have been laid down by the Supreme Court?

2. Short notes on any *two* of the following :—

- (a) Noting and Protest
(b) Drawee in case of need
(c) Dishonour by non-acceptance

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3. Answer any *one* of the following :—

- (a) Mr. X took a loan from Mr. Y of a sum of ₹ 50 lakhs which was disbursed on 30th January 2015 repayable on 30th March 2016. A cheque was drawn on 1st April 2016 for the principal and interest by Mr. X in favour of Mr. Y. However a request was made by Mr. X not to deposit the cheque. Mr. Y acceded to Mr. X's request. However as the three months period for the validity of the cheque was coming to an end Mr. Y on 30th June 2016 deposited the cheque with his bank. The cheque was processed in Mr. Y's bank and transmitted to Mr. X's bank on 1st July 2016. Mr. Y received a bankers intimation Memo stating that the cheque had been returned unpaid by Mr. X's bank on 5th July 2016. A statutory notice was issued by Mr. Y on 2nd August 2016 under section 138 of the Negotiable Instruments Act, 1881. The notice was responded to by the Advocate for Mr. X contending that the cheque that had been presented was an outdated cheque and thus not a negotiable instrument at all and the question of any liability the provisions of the negotiable Instruments Act did not arise. Discuss with supporting case law.

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OR

Mr. X took a loan from Mr. Y of a sum of ₹ 50 lakhs. The terms of the loan agreement *inter alia* provided that the loan together with the interest would be secured by deposit of postdated cheques towards repayment of the installments of the principal in accordance with the agreed repayment schedule and installments of interest due thereon. The postdated cheques were deposited by Mr. Y in accordance with the agreed repayment schedule but were dishonored. On a Section 138 notice being issued by Advocates for Mr. Y, Mr. X, through his advocates, contended that the cheques were handed over as security and on the date when the cheques were handed over there was no outstanding liability and as such the question of any liability for criminal prosecution under the Negotiable Instruments Act did not arise. Discuss the defence of Mr. X with reference to the relevant case law.