

**EXAMINATION OF ARTICLED CLERKS****PAPER V****MODERN COMMERCIAL LAWS****Wednesday, 8<sup>th</sup> November. 2017****Time: 3 Hours (1:00 PM to 4:00 PM)****(Total Marks – 100)**

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**Instructions to be adhered to:**

- (1) Legible and clear handwriting ;a requisite.
- (2) Answers to every Question -on a fresh sheet.
- (3) Answer to the point and if possible do quote Sections, Citations and statutes to support your answer.
- (4) Answer Section-wise.

**SECTION I: THE NEGOTIABLE INSTRUMENTS ACT, 1881****8 marks**

1. (a) Mr. A - a resident of Fountain area in Mumbai -a prospective client comes to you with a cheque and wants you to take "criminal action" against Mr. B who has issued him the cheque. During the conference with Mr. A , it is made known to you that Mr. A had supplied goods worth 10,00,000/- to Mr. B -a resident of Thane on 19th October 2017. Mr. B had issued him a cheque dated 23rd October 2017 drawn on PQR Co-operative Bank Limited -Thane Branch payable at par for the said sum of Rs. 10,00,000/-. Twice over when the said cheque was presented for clearing through Mr. A's Bank in Fountain area, the said Cheque was returned with the remark "Insufficient Funds". MR. A feels cheated ; that for the first time Mr. B did not honour his commitment and repeats that he wants to take "criminal action" and instructs you to share a draft of the proposed initial action. Please advise Mr. A in a manner that Mr. A would understand what action that his Advocate & Solicitor i.e you are intending to take against Mr. B to recover his money and share with him the draft?

**4 marks**

1. (b) Based on your advice as above, Mr. A prosecutes the case against Mr. B before the appropriate Court/Forum, however the Hon'ble Court is pleased to dismiss the proceedings against Mr. B on 15th March 2020. Mr. A is dejected- but since you have done your best, again meets you in your office on the 30th March 2017 with a certified copy of the Order received by him on 23rd March 2020 and seeks your prompt advice. Please advise Mr. A on the steps you propose to take to safeguard his legal interests?

2. Explain, in short , ANY TWO of the following-

**8 marks**

- (a) Interest awarded.
- (b) What are the circumstances under which a liability arises under inchoate stamped instruments?
- (c) What is the purpose and necessity of noting and protest?
- (d) Offences by companies?

3. Please draft a proforma of :-

(a) A Bill Of Exchange and

3 marks

(b) A Demand Pro- Note.

2 marks

### SECTION II: The Indian Partnership Act, 1932

15 Marks

1. Pee and Cee come together to carry out the business of manufacture and sale of "Fire Resistant Safes" and "Numeric Uno Locks and Keys" in 50-50 partnership sharing in profits and losses. Pee has designed and trademarked his fire resistant safe as "Pyro Resi Safes" and has also patented the method of preparing Numeric Locks and Keys. Cee, with the consent of his Landlady, has allowed the use of his tenanted room to carry out the Partnership business. The Business prospered and within two years, the partners purchased commercial office space for the firm from the profits. They earned a lot of Goodwill too. After another 3 years, the partners mutually decide to dissolve the firm and come to you for advice for the following:-

- What property would constitute a Partnership property and why?
- How would you dissolve the firm? Briefly explain the process?;
- Rules to be followed for settlement of accounts specially when there is no contract to the contrary?
- Sale of Goodwill.

2. Answer the following in YES/NO. Elucidate, where possible:-

10 marks

- Can a firm with the name "Imperial Legal Venture" be effected by the Registrar of Firms.
- Is the estate of the deceased partner liable for the acts done by the surviving partners after the death of the partner.
- Whilst introducing a new partner, consent of existing majority partners is mandatory.
- An individual does not have to account for profits made by him when he carries out another business of the same nature, but as a sole proprietor, and competing with his firm as a partner therein.
- 14 year old Priya is not personally liable or the acts of her firm, but her share in the firm is liable for such act.

### SECTION III: The Sale of Goods Act, 1930

1. Write short Notes (Any Two)

10 marks

- Auction Sale;
- Rules as to Delivery of Goods;
- Effecting Stoppage in Transit;
- Remedy for breach of Warranty.

2. Miss Judy is new to the business of designing and making clothes. Mr. Punch owns a large store from which he sells clothes of different designers. Mr. Punch places an order of 1000 pieces of designer Kurtis @ Rs.1000/- each on the 8<sup>th</sup> November and wants delivery of the same by the 15<sup>th</sup> December 2017. He pays to Miss Judy a sum of Rs. 2,00,000/- as an

Advance and the balance on delivery. However on or about 30<sup>th</sup> November, 2017 Miss Judy expresses her inability to deliver the Kurtis and wants to return the advance amount. Please advise Mr. Punch on his legal rights to :-

- |   |         |
|---|---------|
| (a) Specific Performance;                 | 4 marks |
| (b) Repudiation of intention of contract; | 3 marks |
| (c) Interest by way of damages;           | 3 marks |
| (d) Damages for non delivery;             | 3 marks |
| (e) Can Mr. Punch claim special damages.  | 2 marks |

**SECTION IV: The Indian Contract Act, 1872**

4 marks

1. Escada an established high flying singer contracts with Madhosh a music director to sing four tracks for a movie with specific understanding that all the songs have to be recorded within a fortnight. Escada accepts the same and Madhosh makes all the arrangements of the studio and musicians. After recording two songs in seven days, Escada flies away to Istanbul to celebrate her birthday without informing Madhosh or his representative and thus Madhosh is put to sufferance. What should Madhosh do? Please advise him and give reasons for your advice?

2. Explain in brief:

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|--|---------|
| (a) Assignment of a contract and its modes;                      | 4marks  |
| (b) Indemnity. what is the appropriate duty payable on the same. | 4 marks |
| (c) Devolution of joint rights with emphasis on                  | 8 marks |
| (i) Surviving Partner in a firm;                                 |         |
| (ii) HUF;  |         |
| (iii) Co -Trustees;  |         |
| (iv) Co -lessors.  |         |

5 marks

3) Explain in brief and draw a distinction between Liquidated damages and Penalty.

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