

EXAMINATION OF ARTICLE CLERKS

PAPER V

MODERN COMMERCIAL LAWS

Wednesday 25th APRIL 2018

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. Brainyworks Pvt. Ltd. employs Mr. Smart in the capacity of a research engineer. As part of the employment contracts Mr. Smart signs a Non-Disclosure Agreement (that he will not disclose the intellectual Property of Brainyworks Pvt. Ltd. to any 3rd party) and a Non-Compete Agreement (that he will not join a competitor for a period of 2 years after termination of his employment). Mr. Smart, shortly after being promoted to Vice-President Research and Development, resigns from Brainyworks Pvt. Ltd. and joins its competitor Intellectworks Pvt. Ltd. Brainyworks Pvt. Ltd. is planning on suing Mr. Smart for breach of the Non-Disclosure Agreement and the Non-Compete Agreement. What advice would you give Brainyworks Pvt. Ltd.? Can Brainyworks Pvt. Ltd. also sue Intellectworks Pvt. Ltd.?
8 Marks
2. Mr. Vocal a politician in his campaign speech promises to donate a sum of Rs. 1 lakh to the local school for refurbishment. Can the local school enforce that promise? Why?
2 Marks
3. Mr. A, a bachelor, by a Gift Deed transfers his flat in a co-operative housing society to his nephew Mr. B. The Gift Deed also stipulates that Mr. B shall pay to his sister Ms C an annuity of Rs. 50,000/- per annum. On the same day Mr. B promises to Ms. C to abide by the stipulation and executes an Agreement with Ms. C to give effect to the stipulation. Mr. B fails to pay the stipulated sum to Ms. C. What advice would you give to Ms. C?
2 Marks

4. Mr. Bunty contracted to supply 10,000 intervalometers to Ms. Bubbly by 25th April, 2018 at the rate of Rs. 150/- per piece. On 10th April Mr. Bunty informs Ms. Bubbly that due to the increase in customs duty on integrated circuits it will not be possible to supply the intervalometers at the rate of Rs. 150/-. Advise Ms. Bubbly. **2 Marks**
5. Write short notes on any **three** of the following: **12 Marks**
- What are contingent contracts? How do they differ from a wager.
 - Rights of an indemnity-holder when sued.
 - Rights and duties of a Bailor.
 - Circumstance under which an agent may be held personally liable.

SECTION – II

THE INDIAN PARTNERSHIP ACT, 1932

6. Certain overdraft facilities were granted by Moneybags Bank to the firm M/s. Easypeasy at a time when Mr. Easy was a partner. The amounts remained unpaid during which time Mr. Easy retired. Intimation of retirement was given to the bank. The Bank thereafter filed a suit for recovery. Revival letters of the overdraft facilities and subsequent agreement was entered into between the bank and the other partners who also undertook that they would continue to be liable. What is Mr. Easy's liability in respect of the unpaid monies? **4 Marks**
7. M/s. XYZ an unregistered firm sue Mr. A to enforce a right arising from a contract. Mr. A does not raise any objection and in fact waives his defence and consents to the suit proceeding on merits. Can the court pronounce a decree in favour of M/s. XYZ. Give reasons. **3 Marks**

8. Write a brief note on the rights and duties of a partner. **6 Marks**
9. Write short notes on any **three** of the following: **12 Marks**
- i. Expulsion of a partner
 - ii. Implied authority of a Partner as agent of firm.
 - iii. Dissolution of Partnership by the court.
 - iv. Rights of a transferee of a partner's interest.

SECTION – III

THE NEGOTIABLE INSTRUMENTS ACT, 1881

10. Define 'Holder in due course'. What are the privileges of a holder in due course. **10 Marks**
11. Willy the Weasel sells an Iphone to Billy the Kid, a minor, who pays for it by his cheque. Willy the Weasel then endorses the cheque in favour of Gullible Gary who in turn endorses it in favour of Clueless Clark. What advice would you give Clueless Clark. **5 Marks**
12. Can a Complaint under Section 138 of the Act be compounded by the court without the consent of the Complainant on being satisfied that the complainant has been duly compensated? Give reasons for your answer. **5 Marks**
13. State the circumstances under which the drawer of a cheque will be liable for an offence relating to dishonour of the cheque under the Act. **5 Marks**

SECTION – IV
SALE OF GOODS ACT, 1930

14. Solar Energy Ltd. renews its existing contract (for the calendar year 2017) with New Age Fabricators Ltd. to purchase solar panels manufactured by New Age Fabricators Ltd. for the Calendar year 2018. The parties agree that provisionally Solar Energy Ltd. shall continue to pay the price of Rs. 10000/- per panel as was paid for the year 2017. In March 2018 Solar Energy Ltd. communicates the revised price of Rs. 9450/- per panel to New Age Fabricators Ltd. and remits the payment for the months of January and February at the rate of Rs. 9450/- per panel.
- i. Can Solar Energy Ltd. do so?
ii. Does New Age Fabricators Ltd. have any recourse?
15. Distinguish between a sale and an agreement to sell. Give examples. **5 Marks**
16. Who is deemed to be an 'unpaid seller'? What rights does he have? **5 Marks**
17. What are the Rules as to delivery of goods. **5 Marks**
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