

**EXAMINATION OF ARTICLED CLERKS****Paper V****MODERN COMMERCIAL LAWS****Wednesday, 27th April 2016****Time : 3 Hours (1-00 p.m. to 4-00 p.m.)****(Total Marks—100)**

*Notes :—*(1) Answers should be legible, precise and to the point.

(2) Answers to every question should be on a fresh sheet of paper.

(3) Do not reproduce the question.

(4) Please write in neat and clear handwriting.

(5) Figures to the right indicate full marks.

- | <u>Indian Contract Act, 1872</u>  | <b>Marks</b> |
|---|--------------|
| 1. Please explain the concept of damages under the Indian Contract Act, 1872.   | 10           |
| <i>OR</i>   |              |
| Answer Questions 2 AND 3.   |              |
| 2. Attempt any <i>two</i> out of the following <i>three</i> questions ( <i>a, b, c</i> ) :—   | 5            |
| (a) What is a without prejudice offer ? Is it binding upon the maker ?  |              |
| (b) What is economic duress ?   |              |
| (c) Explain the concept of misrepresentation.   |              |
| <i>AND</i>  |              |
| 3. Explain any <i>one</i> of the following questions :—   | 5            |
| (a) What is a breach of contract and what are the remedies for breach ?   |              |
| (b) What is a voidable contract and in what circumstances may a contract be avoided ?   |              |
| 4. Mr. Man is the promoter of Cuckoo Airlines (a company incorporated in India), and holds 70% of its equity share capital. In order to expand its business, on January 1, 2014 Cuckoo Airlines obtained a loan of Rs. 150 crores from Money Makers Pvt. Ltd. (a non-banking financial company) under a Facility Agreement. The loan was repayable on January 1, 2016. As security for due repayment by Cuckoo Airlines, Mr. Man executed a personal guarantee and also created a pledge over his 70% shareholding in Cuckoo Airlines in favour of Money Makers Pvt. Ltd. ? | 15           |
| Cuckoo Airlines defaulted on the loan. Money Makers Pvt. Ltd. invoked Mr. Man's personal guarantee, which Mr. Man failed to honour. On these facts—   |              |
| (a) What are the legal remedies available to Money Makers Pvt. Ltd. against Cuckoo Airlines and Mr. Man ?   |              |
| (b) Can Money Makers Pvt. Ltd. proceed only against Cuckoo Airlines or Mr. Man ? Or must Money Makers Pvt. Ltd. proceed jointly against Cuckoo Airlines and Mr. Man ? Give reasons.   |              |
| (c) Can Money Makers Pvt. Ltd. invoke the pledge created by Mr. Man ? If so, is it necessary for Money Makers Pvt. Ltd. to file a suit on the pledge ?  |              |



- (d) Please explain what recourse would Money Makers Pvt. Ltd. have if, instead of a pledge, Mr. Man had created a negative lien i.e. gave a non-disposal undertaking in respect of his shares in favour of Money Makers Pvt. Ltd. ?
- (e) What remedy would Mr. Man have, if any, against Cuckoo Airlines, if he paid off the amount due by Cuckoo Airlines to Money Makers Pvt. Ltd. ?

**Sale of Goods Act, 1930**

5. MozMorte Ltd., a company incorporated in India sold 100 fogging machines (used for killing mosquitoes) to Shelly for Rs.1 lakh, the payment of which had to be made within 7 days of delivery. The fogging machines were covered by a replacement warranty for a period of 6 months. Shelly took delivery of the machines and put them to use but did not make payment. Through inadvertence, MozMorte Ltd. did not follow up with Shelly for payment. Shelly, however, did not communicate with MozMorte Ltd. for 5 months and 20 days from the said date of sale but on the 21<sup>st</sup> day of the 5<sup>th</sup> month Shelly wrote to MozMorte Ltd. complaining that the fogging machines were defective and that she was therefore under no obligation to pay for them. Shelly also indicated that she intended to return all the machines (which MozMorte Ltd. could collect if it wished), and claim damages from MozMorte Ltd. MozMorte Ltd. admitted that some machines were defective and offered to replace them. MozMorte Ltd. also claimed from Shelly the purchase price of Rs. 1 lakh with interest from the due date of payment. 10

Answer the following questions :—

- (a) Is Shelly entitled to:
- (i) return some or all of the machines ?
  - (ii) refuse to pay the purchase price for all the machines ?
  - (iii) claim damages from MozMorte Ltd. and if so, on what basis ?
- (b) Would Shelly's be entitled to claim damages or replacement of the machines from MozMorte under the warranty ?
- (c) Is MozMorte Ltd. entitled to claim from Shelly the price of Rs. 1 lakh alongwith interest ?

OR

Answer any *two* out of the following 3 questions (6, 7, 8) :—

6. What is a FOB contract ? When does property in goods pass to a purchaser under a FOB contract ? Does the seller have an insurable interest in goods sold under a FOB contract ? 10
7. What is an auction sale ? When is the sale complete ? When can a sale be avoided by the buyer and what would be the buyer's remedy in such event ?
8. What is a CIF contract ? What are the obligations of the seller and the buyer under a CIF contract ?
9. Sneha Sharma purchased a black dress online on March 3, 2016 from Clipcart (www.clipcart.com) with the intention of wearing it for her birthday party on March 11, 2016. She paid for the dress by making an online transfer of funds using Clipcart's net-payment service. Clipcart's website stated that delivery would be made within 4 to 7 days. However, the dress was delivered to Sneha only on March 12, 5



2016 i.e. 9 days after the date of purchase. As she could not wear the dress on her birthday Sneha refused to accept delivery and claimed a refund of the purchase price on the basis of late delivery. Clipcart refused to refund the purchase price, stating that the dress was purchased in an on-line sale at a discounted price and was therefore not returnable.

Answer the following questions :—

- (a) When is a buyer deemed to have accepted the goods purchased under the Sale of Goods Act, 1930 ?
- (b) On above facts, would the date of delivery of the dress be a term which made time the essence of the contract ?
- (c) Assuming the terms of the sale of Clipcart stated that the dress was offered at a discounted price and was not returnable, was Sneha nevertheless entitled to refuse to accept delivery and claim a refund of the purchase price ?

### Indian Partnership Act, 1932

Attempt any *two* out of the following 3 questions (10, 11, 12) :—

10

10. What are the rights and liabilities of a Partner in a partnership firm—
  - (a) after the partnership firm is dissolved ? and
  - (b) after the partner concerned has retired ? and
  - (c) after dissolution of the firm or retirement of a partner, can a former partner be restrained from carrying on a similar / competing business ? If so, for how long ?
11. What are the effects of non-registration of a partnership firm ? With regards to a partnership running its business in Pune, what is the effect of non-registration of a partnership on the right of a partner to sue for dissolution of the firm and/or for accounts and realization of partnership property ?
12. Treble occupies commercial premises admeasuring 500 sq.ft. on tenancy basis from Xylo who is the landlord. Bass, Boom and Treble enter into a partnership agreement to run a business of selling musical instruments. As part of his contribution to the partnership, Treble permitted the firm to use the premises as office space. After carrying on business for 3 years, Treble has decided to retire from the partnership business. As the partnership business is being conducted from the said premises, Bass and Boom wish to retain the premises and pay Treble his share in the partnership business in monetary terms; Treble agrees. Bass and Boom have approached you to advise them on the following :—
  - (a) Can Bass and Boom retain the premises for use as office premises of the firm and pay Treble his share of the partnership in monetary terms ? If so, what documentation would you advise the partners to execute to put this arrangement in place ?
  - (b) Would your advice be any different if the premises were owned by Treble ? What documentation would you advise the partners to execute to put this arrangement in place ?

13. Your client, Simple Simon and his wife, are proposing to commence the business of manufacturing of pharmaceuticals. They have a minor son whom, for sentimental reasons, they want to include formally in the business. Simple Simon has informed you that this is a business which is likely to be exposed to a number of risks such as consumer complaints,

15



intellectual property claims, and regulatory fines. He seeks your advice on the entity through which he should carry on this business—a partnership firm or, a company. In this context, please advise Simple Simon on the following :—

- (a) In terms of liability, would you recommend a partnership firm over a company to carry on the proposed business of manufacturing of pharmaceuticals ?
- (b) Can Simple Simon's minor son become a partner of the firm or member of the company ?
- (c) What would be the minor son's rights and liabilities, if admitted to the partnership ?
- (d) At a later date Simple Simon's wife decides to retire from the partnership firm. On retirement of his wife, Simple Simon wants to introduce his major daughter in the firm. Would this be possible ? If yes, what would be the process to follow to introduce the daughter in the partnership ?
- (e) After the partnership firm has been formed Simple Simon wishes to mortgage his interest in the firm to a third party. Would he be able to do so ? How ? What rights would the mortgagee have in the partnership ?

#### Negotiable Instruments Act, 1881

14. Mr. Patel, the Managing Director of Patel & Patel Ltd., a company incorporated in India, issued a cheque for Rs. 50 lakhs in favour of Mr. Ding for purchase by the company of certain heavy machinery. Mr. Ding deposited the cheque but it was returned by Mr. Ding's Bank with the mark "insufficient funds". Mr. Ding filed a complaint before the Metropolitan Magistrate under Section 138 of the Negotiable Instruments Act, 1881, within 15 days of the return of the cheque, against Patel & Patel Ltd. and all its directors. The Magistrate held Patel & Patel Ltd. guilty, but acquitted the directors on the ground that Mr. Ding had failed to issue the requisite statutory notice under Section 138 to the directors individually and that therefore proceedings against them could not be sustained.

15

Answer the following :—

- (a) Draft the complaint on behalf of Mr. Ding.
- (b) Please explain whether the Magistrate was justified in acquitting the Directors of Patel and Patel Ltd. on the ground mentioned above ?
- (c) If Patel & Patel Ltd. were a Public Charitable Trust registered under the Bombay Public Trust Act, 1950 or a Society registered under the Societies Registration Act, 1860 would a notice be required to be addressed to all the trustees ?

Answer any *two* out of the following 3 questions (15, 16, 17) :—

10

15. Xenophon is an agent of Aristotle for buying and selling goods for carrying out Aristotle's business. Xenophon issued a cheque for Rs. 10 lakhs to Socrates, Aristotle's supplier, which was dishonoured. In such a case:

(a) Who is liable for the dishonour of the cheque ? Who is liable for the payment of Rs. 10 lakhs ?

(b) Would the answer differ if Xenophon had not disclosed that he was the agent for Aristotle ?

(c) What remedies does Socrates have against Xenophon and Aristotle ?



16. Explain the following :—
- (a) The difference between a bill of exchange and a promissory note.
  - (b) Noting and protest;
  - (c) Inchoate stamped instrument and ambiguous instrument.
17. Answer any *two* of the following questions :—
- (a) How is the liability of the maker, acceptor or indorser of a negotiable instrument discharged ?
  - (b) Explain negotiation by endorsement and delivery. What is the liability of an endorser ?
  - (c) Explain the concepts of 'holder' and 'holder in due course'.
-