

EXAMINATION OF ARTICLED CLERKS

PAPER V

MODERN COMMERCIAL LAW

WEDNESDAY 20th MAY 2015

TIME: 3 HOURS (1-00 PM TO 4-00 PM)

(Total Marks 100)

Instructions :

- *Please write neat, legible and clean handwriting.*
- *Please do not reproduce questions and if you do, marks will be deducted.*
- *Please answer briefly and to the point. Length is not material.*
- *Quote sections, statutes and citations in full (not just year or names of parties) to support your answer only if you know them correctly. If you do not know or don't remember the citations or authorities, avoid them or your marks will be deducted.*

SECTION I: The Indian Partnership Act, 1932

1. What is "Dissolution by operation of law"? Distinguish it from Dissolution by Notice? Which are the other modes of dissolution of a partnership firm? **10**

2. Write Short notes on any five of the following: **15**
 - a. Holding out
 - b. Expulsion of partner
 - c. Modes of settlement of Accounts between partners
 - d. Effect of non-registration of /firm
 - e. Agreement in restraint of trade
 - f. Minors admitted to the benefit of the partnership

[Turn Over

SECTION II: The Indian Contract Act, 1872

1. Write short notes on any three of the following: 12
- a. Reciprocal Promise
 - b. Novation, rescission and alteration of contract
 - c. Indemnity and Guarantee
 - d. Agent and Principal
 - e. Bailment and Pledge
2. What agreements are contracts? Briefly explain provisions of Void and Voidable Contracts? 10
3. Answer with reference to case laws: 3
- a) A property was leased to a mill, the management of which was taken over by the Central Government under a taking over of management Act enacted by the Parliament. The lease expired in 1990, but the mill continued as tenant holding over. Subsequently, the Undertaking of the mill was vested and transferred to a Corporation under the Nationalisation Act. The owners issued termination notice and filed suit for eviction against the mill. Can the Corporation raise a plea that it is an "agent" of the Central Government?
 - b) Consigned goods were damaged during transportation and common carrier was held liable to pay the price of the goods to the purchaser. The consignee also received payment from the purchaser. Can the common carrier claim the damaged goods or price thereof? What if the damaged goods are sold by the consignee?
 - c) Rights in a registered Trade Mark were assigned by A to B by executing a Deed of Assignment, wherein a clause was incorporated to restrain A from marketing goods with the registered Trade Mark save and except through B. Would such a clause amount to "Restraint of trade" and be void?

SECTION IV: The Negotiable Instruments Act, 1881

1. Define “Negotiable Instrument”? What is the difference between a “Bill of Exchange” and a “Promisory Note”? Draft both these documents. 7
2. Explain any four of the following: 12
 - i) Indorsement in blank and in full
 - ii) Inland and Foreign Instrument
 - iii) Noting and Protest
 - iv) Offences for dishonor of cheque by Company
 - v) Interest
2. Give your valuable advice/opinion **giving reasons** on any two of the following cases citing relevant case laws : 6
 - a. A complaint for dishonor of cheque was pending against a company. In the meanwhile, a scheme u/s.391 of the Companies Act, 1956 framed by the company was approved by the Court. Will the offence for dishonor of cheque under the Negotiable Instruments Act get automatically compounded?
 - b. A cheque was issued by the husband out of the joint account with his wife, which was returned dishonoured with the remarks “funds insufficient”. If the complainant is your client, what will be your advice to him? Who would be the accused in such a case?
 - c. X filed a complaint for dishonour of cheque, but forgot to sign the complaint. The magistrate dismissed the Complaint on that ground. Is the order sustainable?

SECTION IV: The Sale of Goods Act, 1930

1. Write short notes on any five of the following: 25
 - a. Rights of Unpaid Seller
 - b. Sale and Agreement to sell
 - c. Transfer of title in goods
 - d. Auction Sale
 - e. Condition and Warranty
 - f. Implied Undertaking as to Title
 - g. “Goods” and subject matter of contract
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