

EXAMINATION OF ARTICLED CLERKS**Paper V****MODERN COMMERCIAL LAW****Wednesday, 4th November 2015****Time : 3 Hours (1-00 p.m. to 4-00 p.m.)****(Total Marks—100)**

- Instructions* :— (1) Please write neat, legible and clean handwriting.
 (2) Please do not reproduce questions.
 (3) Please answer briefly and to the point.
 (4) If possible quote sections, statutes and citations to support your answer.

SECTION I : The Indian Partnership Act, 1932**Marks**Answer any *five* :—

25

1. What are the implied authorities of the Partner as an agent of the Firm? What are his authorities in an emergency?
2. Discuss the rights of outgoing Partner to carry on competing business of same trade.
3. What is an "Act of Firm"? Which are the general duties of Partner?
4. What is "Goodwill" of the Firm? Discuss whether all Partners of the Firm after assigning their Firm's Goodwill with business premises to a third party can thereafter continue the same trade with new name in the same town at another place of business?
5. Discuss the effect of non registration of Partnership Firm.
6. A Partnership Deed bears the signatures of husband, his wife, unmarried son and unmarried daughter. All are adult but both son and daughter are students. In a suit filed by a creditor against the Firm and all Partners for recovery of price of goods sold and supplied to the Firm, the wife, son and daughter claim ignorance regarding Partnership Deed and denies the Partnership and their liability. Advise the creditor.

SECTION II : The Indian Contract Act, 18721. Answer any *three* :—

15

- (a) What is Contract of Guarantee? Who is Surety, Principal Debtor and Creditor? What happens when the Guarantor alleges that Creditor Bank had subsequently filled up the gaps in the Deed with pen and such additions do not bear Guarantor's initials?
- (b) Difference between authority of an "Agent" and "General Power of Attorney Holder".
- (c) Mukesh finds a diamond ring from a wash basin in the toilet of a Marriage Hall. In order to find the owner of the diamond ring, he makes announcement in the Hall, but finds no claimant. Hence he keeps the ring. Unfortunately on his way home, a thief snatches his bag containing the ring. Few days later, the owner of the ring contacts him to return the ring. Upon showing inability to return the ring, the owner sues Mukesh for getting the ring or in the alternative claims damages. Advise Mukesh.

- (d) Give an example where the consideration and object of an agreement, both are unlawful. Explain its effect on enforceability of such agreement.
- (e) What is Joint Liability? What will be the effect of release of one joint promisor?
2. A construction contract provides that the Contractor shall pay Rs. 50 Lacs as damages to the School Trust if construction of School building is not completed within 12 months. Contractor has taken 15 months to complete construction. What are the rights of Trust when the Contractor alleges that the delay was on account of delay in providing the building plans by Trust? Discuss. 5
3. What is Pledge? A Bank has advanced Rs. 100 Crores against pledge of cotton bales. Before the debt is fully repaid, the Bank has further advanced Rs. 100 Crores to the Pawner without any further agreement. In case of partly non payment of first loan and full non payment of second loan, what is the right of Bank against the goods? 5

SECTION III : The Negotiable Instruments Act, 1881

1. Answer any five :— 15
- (a) Explain Indorsement “in blank” and “in full” and “indorsee”.
- (b) Pappu, a minor, having account in a Bank had signed and drawn a cheque of Rs. 2000/- in favour of his School for payment of monthly fees. Upon the cheque's presentation by School, the Bank refused to accept it on the ground that Pappu is a minor. Discuss in short the rights (or liabilities) of the Bank.
- (c) Discuss Negotiable Instrument made without consideration.
- (d) What is the right of drawee to receive interest on the amount due when no rate of interest is specified in the instrument? Explain.
- (e) What will be the effect of material alteration in a negotiable instrument?
- (f) A Holder of bearer cheque of Rs. 4,000/- (Rupees Four Thousand) fraudulently alters it and makes it a cheque of Rs. 14,000/- (Rupees Fourteen Thousand) and upon its presentation, the Bank pays Rs. 14,000/- to the Holder. The Drawer sues the Bank to pay the difference of Rs. 10,000/- for negligence. Advise the Bank.
2. Discuss in short the provisions relating to penalties in case of dishonour of cheque for insufficiency of funds in the account. 10

SECTION IV : The Sale of Goods Act, 1939

- Answer any five : 25
1. Explain “Goods”, “Future Goods” and “Specific Goods”.
2. How can two parties enter into Contract of sale of goods? Is attestation necessary? What happens if Parties have omitted or forgotten to state the price of goods? What will happen if price has been paid in advance to the wholeseller but the goods have perished before delivery and the buyer insists for delivery of goods from the wholeseller?
3. In a Contract for sale of Basmati Rice, it was found that the sample approved was of general rice. What is the obligation of Seller?
4. Explain “Sale by person not the owner”.

EXAMINATION OF APPLICATED CLERKS

Marks

- 5. In an auction sale, the sale was confirmed by the fall of the hammer and the bidder had paid the price. However subsequently the auctioneer refused to deliver the goods to the bidder on the ground that he was a sole bidder and that there was no competition. The bidder sues for delivery of goods and/or damages. Advise the auctioneer.
- 6. When breach of condition is to be treated as breach of warranty ?

SECTION I : The Indian Partnership Act, 1932

Marks

- 1. What are the essential characteristics of the Partnership as defined in the Act? What are the liabilities of a partner in an emergency?
- 2. In what cases can a partner be held liable to carry on the business of the firm?
- 3. What is the liability of a partner for the general debts of the firm?
- 4. What is the liability of a partner for the debts of the firm incurred by a partner who is not a partner in the firm?
- 5. Distinguish between the liability of a partner in a firm and the liability of a partner in a partnership.
- 6. A partner in a firm is also the owner of a house, his wife, unmarried daughter and a son. The wife, daughter and son all are creditors against the firm. All the debts of the firm have been paid and supplied to the firm, the wife, son and daughter have also received their share of the firm's assets. Advise the partner regarding the liability of the firm towards the wife, daughter and son.

SECTION II : The Indian Contract Act, 1872

- 1. Answer any three questions.
 - (a) What is Contract of Guaranty? Who is Surety, Principal Debtor and Creditor? What happens when the Surety defaults? Give an example.
 - (b) Distinguish between "Special Power" and "General Power of Attorney".
 - (c) A man found a diamond ring in a box in the pocket of a garment in a shop. In order to find the owner of the diamond ring, he put the ring in a box and left it in the shop. He had no claimant. Hence he kept the ring. Unfortunately on his way home, a thief snatches the ring from his pocket. Few days later, the owner of the ring contacts him to return the ring. Upon showing inability to return the ring, the owner sues him for getting the ring. Advise the man regarding the alternative claims damages. Advise the man.