



J.K. SHAH[®]
TEST SERIES
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SUGGESTED SOLUTION
CAFC NOVEMBER 2018 EXAM
**SUBJECT – Law & Business Correspondance
& Reporting**
Test Code - CFN 9031
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Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.
Tel : (022) 26836666

Part A –Business Law

Answer 1:

(A) The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (*Bolton v. Modden*). Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

(B) An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in **Frost v. Knight and Hochster v. DelaTour**:

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promise may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."

Effect of anticipatory breach: The promise is excused from performance or from further performance. Further he gets an option:

- (1) To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or
- (2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non – performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re – consideration, may still perform his part of the, contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

© As per provisions of Sale of Goods Act 1930, The ownership is transferred as soon as the seller has put the goods in a deliverable state and the buyer comes to know about the act of the seller.

In the given question, A contracts to sell to B all the oil to be produced from groundnut harvested from A's farm. The crops having been harvested and oil made there from, A fills the oil in cans supplied by B. However, A hasn't yet informed B. Since B doesn't know about deliverable state, the property in oil does not pass to B.

(D) Right of stoppage of goods in transit -

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

- (a) The seller must be unpaid.
- (b) The seller must have parted with the possession of goods.
- (c) The goods must be in the course of transit.
- (d) The buyer must have become insolvent.
- (e) The right is subject to provisions of the Act.

Answer 2:

(A) (i) In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

(ii) In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

(B) Section 69 of the Indian Contract Act, 1872, provides that "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. In the given case Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. That means Y has made the payment of lawful dues of X in which Y had an interest. Therefore, Y is entitled to get the reimbursement from X. Hence, X is bound to make good to Y the amount so paid.

(C) **Void and Illegal Agreements** : According to Section 2(g) of the Indian Contract Act, an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void. Despite the similarity between an illegal and a void agreement that in either case the

agreement is void and cannot be enforced by law, the two differ from each other in the following respects :

(i) Scope : An illegal agreement is always void while a void agreement may not be illegal being void due to some other factors e.g. an agreement the terms of which are uncertain is void but not illegal.

(ii) Effect on collateral transaction : If an agreement is merely void and not illegal, the collateral transactions to the agreement may be enforced for execution but collateral transaction to an illegal agreement also becomes illegal and hence cannot be enforced.

(iii) Punishment : Unlike illegal agreements, there is no punishment to the parties to a void agreement.

(iv) Void ab – initio : Illegal agreements are void from the very beginning but sometimes valid contracts may subsequently become void.

Note: Students should write any 2 points of differences amongst above.

Answer 3:

(A) The document becomes the document of title only on satisfaction of the following –

(a) Unconditional : It must show an unconditional undertaking to deliver the Goods to the holder of the document.

(b) Different from Acknowledgement for Receipt : Though a Bill of Lading is a document of title, a Mate's Receipt [It is the receipt given by the Servant (Mate) of the Captain of the ship, on receipt of Goods into the ship for boarding] is merely an acknowledgement for the receipt of Goods.

(c) Enforcement of Rights : Only a bonafide holder of a document of the can enforce his right thereunder. A person, who gets possession of a Bill of Lading by stealing it, does not have any right as against a bonafide holder for value.

(d) Estoppel : The Negotiation effected by the true holder is precluded from denying the transfer at the latter point of time.

(e) Holder's position in case of defect in the title of Goods : Unlike a holder in due course, a holder cannot get a good title to Goods, when there is defect in the title of Goods of Transferor.

(B) Liquidated damage is a genuine pre – estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculations and the necessity to convince outside parties.

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

In terms of Section 74 of the Act "where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the

other party who has broken the contract, a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

Explanation to Section 74

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is 'penalty' or "liquidated damages" provided the sum appears to be unreasonably high.

Sri Chunnilal vs. Mehta & Sons Ltd.(Supreme Court)

Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then the court has powers to reduce the amount if it considers it reasonable to reduce.

- (C) Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame any body excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus : "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

The rule of caveat emptor does not apply in the following cases :

(i) Fitness for buyer's purpose: Where the buyer, expressly or by implication, makes know to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section 16(1)).

(ii) Sale under a patent or trade name: In the case of a contract for the sale of specified article under its patent or other trade name, there is not implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1)).

(iii) Merchantable quality: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is not implied condition as regards defects which such examination ought to have revealed. (Section 16(2)).

(iv) Usage of trade: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3)).

(v) Consent by fraud : Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

Part B – Business Correspondance and Reporting

Answer 4:

- 1) d 2) c 3) c 4) a 5) d

Answer 5:

Notes:

Tsunami (Heading)

- (i) What is Tsunami? (Sub Heading)
 - a) Monster waves
 - b) Go to a hght of 30m

- (ii) Causes and occrnc of a Tsunami
 - a) Earthqukes undr the sea
 - b) Occur in high seismic zones
 - c) Also occur in shallow areas with tectonic plate movmnt.

- (iii) Key ftrs of Seismic Zones
 - a) Bndry of tectonic plates rough
 - b) Prsnc of hard rock than sediment nr sea bed
 - c) Series of cracks in the plate bndry

Key Used

- 1) Hghy – height
- 2) Occnce – occurrence
- 3) Undr – under
- 4) Movmnt – movement
- 5) Ftrs – features
- 6) Bndry – boundary
- 7) Prsnc – presence

Answer 6:

i)

- Complex sentence – independent clause – The soldiers were asked to carry out the orders – dependent clause – which their commander had given them.
- Compound sentence – independent clause – Anil did his own work, - independent clause – (he) helped others complete theirs.

ii)

- The man asked me if my father was home.
- She enquired / asked of David if he would tell her what it meant.

iii)

- The crowd cheered the captain of the Indian cricket team.
- They installed the first fax machines in 1958.

iv)

- A scathing review was written by the critic.
- Payment is enclosed together with our order by us.

v)

- Simple
- Compound