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FOUNDATION N'18 EXAM

**SUBJECT- BUSINESS LAW AND BUSINESS
CORRESPONDENCE AND REPORTING**

Test Code - CFP 4007

BRANCH - () (Date :)

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

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ANSWER-1

ANSWER-A

Section 73 of the Indian Contract Act, 1872 provides for compensation for loss or damage caused by breach of contract. According to it, when a contract has been broken, the party who suffers by such a breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, PM Ltd. is obliged to compensate for the loss of Rs. 1.25 lakhs (i.e. Rs. 22.75 lakhs – Rs. 21.50 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Gupta Traders were compelled to make to Zenith Traders, it depends upon the fact whether PM Ltd. knew about the contract of Gupta Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, PM Ltd. is also obliged to reimburse the compensation which Gupta Traders had to pay to Zenith Traders for breach of contract. Otherwise PM Ltd. is not liable for that.

ANSWER-B

Condition and warranty (Section 12): A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty. [Sub-section (1)]

“A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated”. [Sub-section (2)]

“A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated”. [Sub-section (3)]

Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. [Sub-section (4)]

In the instant case, the term that the ‘car should be suitable for touring purposes’ is a condition of the contract. It is so vital that its non-fulfilment defeats the very purpose for which Ram purchases the car.

Ram is therefore entitled to reject the car and have refund of the price.

ANSWER-C

A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows:

Rights:

- a. A minor partner has a right to his agreed share of the profits and of the firm.
- b. He can have access to, inspect and copy the accounts of the firm.
- c. He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- d. On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

ANSWER-2

ANSWER-A

Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorized to carry on. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

Therefore, the resolution passed by the Board of Director ABC Pvt. Limited for an ultra vires transaction is invalid. As a result of this, the transaction entered into the supply of fish with FSH Limited is not legal and is void.

ANSWER-B

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely, (a) the suit must be instituted by or on behalf of the firm which had been registered; (b) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in 2017, B and C had taken a new partner, D, and then filed a suit against X without fresh registration. Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

ANSWER-C

Essential elements to incorporate LLP - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
- (iii) To have registered office in India to which all communications will be made and received;
- (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
- (vi) To execute a partnership agreement between the partners *inter se* or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
- (vii) LLP Name.

ANSWER-3

ANSWER-A

Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to

- promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

- promoting its objects and
- prohibiting the payment of any dividend to its members.

The Central Government has the power to issue license for registering a section 8 company.

- (a) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
- (b) The registrar shall on application register such person or association of persons as a company under this section.
- (c) On registration the company shall enjoy same privileges and obligations as of a limited company.

ANSWER-B

Agreements declared void under the Indian Contract Act –

1. Agreement to enter into an agreement in future.
2. Agreement that gives rise to social obligations.
3. **Sec.11:** Agreements entered into by incompetent parties.
4. **Sec. 20 :** Agreements entered into through a mutual mistake of fact between the parties.
5. **Sec.23:** Agreements, the object or consideration of which is unlawful.
6. **Sec.24 :** Agreements, part of the consideration or object of which is unlawful and the unlawful object, cannot be separated from the lawful objects.
7. **Sec.25:** Agreements, made without consideration.
8. **Sec. 26 :** Agreements in restraint of marriage.
9. **Sec.27 :** Agreement in restraint of trade.
10. **Sec. 28 :** Agreement in restraint of legal proceedings.
11. **Sec.29 :** Uncertain Agreements.
12. **Sec.30 :** Wagering Agreements.
13. **Sec.36 :** Agreements contingent upon impossible events.

14. **Sec. 56** : Agreement to do impossible acts.

15. **Sec. 57**: Agreement to do reciprocal promises, one set of which is legal, and the other set is illegal.

ANSWER-4

ANSWER-A

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:

- (a) **Fitness for buyer's purpose:** Where the buyer, expressly or by implication, makes known 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)].
- (b) **Sale under a patent or trade name:** In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose [Section 16(1)].
- (c) **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 no implied condition as regards defects which such examination ought to have revealed. [Section 16(2)].
- (d) **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)].
- (e) **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.

ANSWER-B

The company is distinct person separate from its Members. This principle is called "Veil of Incorporation."

2. The advantages of incorporation can be enjoyed only by those who honestly use the Veil of Company, for the collective benefit of the Company and also of its members.
3. Where there is a dishonest and fraudulent intention to utilise the facility of incorporation, the law can remove the "Corporate Veil" and identify the persons who

are behind and responsible for commission / perpetration of fraud, and "hold such persons as personally liable. This concept is called "Lifting of Corporate Veil".

A Corporation will be looked upon as a separate legal entity as a general rule but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will disregard the Corporate Entity, and consider the Company and its Members as one and the same. – **United States vs Milwaukee Refrigerator Co.**

ANSWER-5

ANSWER-A

The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act, 1932. The section provides that subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his 'Implied Authority' [Sub-Section (1) of section 19]. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership.

Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:

- (i) The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods.
- (ii) In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm.

In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.

ANSWER-B

(a) A company being an artificial person cannot own property and cannot sue or be sued

Incorrect: A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

(b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

Correct: Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

ANSWER-6

ANSWER-A

Agreement in Restraint of Trade: Section 27 of the Indian Contract Act, 1872 deals with agreements in restraint of trade. According to the said section, every agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, in the case of the service agreements restraint of trade is valid. In an agreement of service by which a person binds himself during the term of agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade, so it is a valid contract.

In the instant case, agreement entered by 'X' with 'Y' is reasonable, and do not amount to restraint of trade and hence enforceable.

Therefore, 'X' can be restrained by an injunction from practicing on his own account in within the said area of 20 Kms for another one year.

ANSWER-B

Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]: Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality.

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

The expression "merchantable quality", though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

Example: If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as unmerchantable.

Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

Example: A supplied F with milk. The milk contained typhoid germs. F's wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

ANSWER-C

Mere silence not amounting to fraud: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.

It is a rule of law that mere silence does not amount to fraud. A contracting party is not duty bound to disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act, 1872 which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Exceptions to this rule:

- (i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).
- (ii) Where the silence is, in itself, equivalent to speech.

PART – B

BUSINESS CORRESPONDENCE AND REPORTING

Answer : 1(A)

1. (b)
2. (c)
3. (a)
4. (c)
5. (c)

(B) (1) Prominent temples at Somnathpur :

- (a) built around 1268 A.D.
- (b) built by Hoyasalas.
- (c) built by most prolific temple – builders.
 - Belur and Helebid
 - Suffered during the invasions of 14 century

(2) Temple : the beauty and vitality :

- (a) Detailed sculpture – covering walls, pillars, ceilings.
- (b) Three shikharas – stands star – shaped, raised platform – 24 edges
- (c) The outer walls – detailed carvings
- (d) The entire surface – carved plaques of stone,
- (e) Vertical panels covered by exq. Fig. of gods & goddesses

- (3) Characteristic of Hoyasala sculptures :
- the series of friezes on the outer walls
 - revealed intricately carved caparisoned elephants.
 - charging horsemen
 - stylized flowers
 - warriors, musicians, crocodiles, and swans.
- (4) Temple in the History :
- Commissioned by Soma dandanayaka or Somnath
 - inner center of temple Kalyana Mandapa
 - Leading – three corridors, each ending in a shrine
 - Each kind of Krishna – Venugopala, Janardana and Prasanna Keshava.

Key to Abbreviations

Inc. – includes
 Exq. – exquisite
 Fig. – figures
 Tstmny – testimony

Summary : Somnath temple is situated in a small village of Somnathpur. It was commissioned by Soma Dandanayaka or Somnath and it was build around 1268 A.D. The temple of Somnath is extraordinary due to the sculptures on the walls, pillars, and even the ceiling which are covered by exquisite figures of gods and goddesses. The sculptures have a series of finches on the outer walls. The various motifs are carved elephants, charging horsemen and stylized flowers. It had three corridors, each ending in a shrine, one for each version of Krishna – Venugopala, Janardana and Prasann Keshava.

Answer No : 2

- (a) The barriers in communication are physical, organizational structure, language, cultural, emotional attitude and perception, physiological, gender and technical.
- (b) (i) (a) Many
 (ii) (a) Baffle
 (iii) Hydrocarbons cause one type of air pollution.
 (iv) The girl said that it gave her great pleasure to be there that evening.
- (c) **INSPIRING LEADERSHIP**

Mr. Soni faces a challenging task of turning around a loss making a car manufacturing company which he recently joined as Managing Director. In the previous company, Mr. Soni had proved to be a proficient manager and his inspiring leadership had lead to increased morale and productivity of the employees. He continued his policy of participative management and equal concern for production and people in the new company. To improve the bottom line of the company he affected major changes like decentralization, empowerment of junior managers and increase spending on staff welfare. Majority of employees were willing to try these changes.

Answer No : 3

(a) **Meaning** : The Informal Channel of Communication (Grapevine) is a secondary network of information. Its source lies in man's compulsive instinct to communicate or talk out whatever he feels and thinks with his fellow beings.

- (b) (i) d
(ii) c
(iii) She was not beaten by me.
(iv) The young man asked which way she had gone.

(c) **Letter**

To : naveen. bansal@ yahoo.com

CC/ BCC :

Subject : New range of Furniture

Dear Mr. Naveen Bansal,

We are pleased to announce the launch of our new range of furniture, "Imperial", which is one of its kind and we are also proud to state that we are the first in the market to provide these new designs.

The Furniture designs are trendy and stylish and are being well received by our customers.

We believe this fresh version would go well with your Restaurant theme and ambience. You will be the first in your line of activity to use these furniture which provide better satisfaction for Clientele visiting your Restaurants. As you are our valued Customer, we are happy to offer this furniture range to you at a special discount.

We are also pleased to invite you to our show room to experience the difference made by this new range of furnishings. Please call the undersigned so that he can decide a convenient time for your visit.

Meanwhile, we request you take a look at the furniture range by clicking on to the following link.

[http : //www. surbhifurnishings.com/Imperial](http://www.surbhifurnishings.com/Imperial)

We are committed to your satisfaction and welcome your feedback.

Thanking you.

Regards,

Pradeep Kumar

General Manager

Surbhi Furnishings

Answer : 4

(a) The Wheel network is a highly centralized type of communication network where each subordinate receives commands or instructions from a single authority or superior. It is an inappropriate way of communication in a large organization with many people. A company with many employees needs more decisions makers or nothing would get done. Moreover, if the central figure is not competent, the entire business will suffer.

- (b) (i) flawless
(ii) Go bankrupt
(iii) To grease the palm – (b) to offer bribe

(c)

1. Use newspaper format.
2. Opening statement – fire destroying entire slum.
3. Cause of fire – short circuit.
4. Time fire started.
5. Spread rapidly due to inflammable materials used to build hutments.
6. 500 families lost all their belongings no roof over their head in this inclement weather.
7. Ten people sustained burn injuries. Others lucky to escape.
8. People seeking help / compensation from government.

Answer : 5

(a) **Based on Communication channels, there are three kinds of categories :**

- Verbal : Verbal Communication involves the use of words and language in delivering the intended message.
- Non Verbal : Nonverbal communication is the process of communicating by sending and receiving wordless messages. These messages can aid verbal communication, convey thoughts and feelings contrary to the spoken words or express ideas and emotions on their own.
- Visual : Visual communication through visual aids such as signs, typography, drawing, graphic design, illustration, colour and other electronic resources usually reinforces written communication. Visuals like graphs, pie charts and other diagrammatic presentations convey clearly and concisely a great deal of information. They are an essential part of official presentations these days.

(b) (i) (1) storm in a teacup – (d) make a big issue of a small thing

(2) In the pink of health – (c) best of health

(ii) Brother said that he had finished his studies.

(c) Minutes of the Meeting

Date : 3rd Oct, 2018

Meeting started at 4 : 00 p.m.

In Attendance : Chairperson, Product Head, Sales Head and Creative Director. FMCG.

Agenda : Discussion on Sales, Marketing and the advertising strategies.

Mrs Kamla Murthy, Chairperson, gave an introduction about the product range and the need to add more to retain the market share.

Mr. Raju D, Product Head Spoke about the new product its USPs and explained how it was superior to similar products in the segment available in the market.

Mrs. Usha Krishnan, Sales Head gave a detailed analysis of costing, overheads and other miscellaneous expenses to market the product.

Ms. Jennie Matthew, Creative director, PR, spoke about advertising campaign. Also mentioned the cost involved.

Her team including Mr. X, Mr. Y, Mr. Z elaborated on the advertising strategies.

All the participants approved of the plan and appreciated it.

Madam Chairperson declared an open house for participants to put up their concerns, and finally gave a vote of thanks.

Conclusions stated. Proposal for more funds put forward

ATR to be submitted by 10th Oct, 2018