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SUGGESTED SOLUTION

FOUNDATION N'18 EXAM

**SUBJECT- BUSINESS LAW AND B.C
AND REPORTING**

Test Code – CFP 4008

BRANCH - () (Date -)

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ANSWER-1

ANSWER-A

Delivery and its forms: Delivery means voluntary transfer of possession from one person to another [Section 2(2)]. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Forms of delivery: Following are the kinds of delivery for transfer of possession:

(a) **Actual delivery:** When the goods are physically delivered to the buyer.

(b) **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) *e.g.*, where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

(c) **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.

ANSWER-B

As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Therefore, in the instant case, Sanjay is entitled to receive Rs. 50,000 from Vijay's assets and Rs. 2,75,000 from Ajay.

ANSWER-C

As per provisions of The companies Act, 2013, courts can lift the corporate veil if companies are formed to divide income and avoid tax or avoid any welfare laws. As per the case of Sir Dinshaw Maneckjee Patit, he had formed for private companies, in all of which he was the majority share holder. The companies made investments and whenever interest and dividend income were received by the companies, D applied to the companies for loans, which were immediately granted and he never repaid. In a legal proceeding the corporate veil of all the companies were lifted and the income of the companies treated as if they were of 'D'.

- (a) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the facade of the assessee himself. Therefore, the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company.
- (b) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans.

ANSWER-2

ANSWER-A

Sub – Partnership :

- (a) When a Partner of a Firm agrees to share his own share of profits with an outsider, it is called sub – partnership and such outsider is called a Sub-Partner.
- (b) A partner is free to make an agreement of sub – partnership, provided it does not affect the position of other Partners with reference to him.
- (c) A Sub - Partner –
- Is NOT connected with the Firm.
 - Has NO relationship with other Partners in the Firm.
 - Acquires NO rights to take part in or to interfere with Firm’s business or examine the Firm’s accounts.
 - CAN claim his agreed share from the Partner with whom he enters into sub – partnership.
 - Upon dissolution of Firm, he is in the same position as that of a Transferee of a Partner’s Share.

Partnership at will [Sec 7]:

A partnership is called a partnership at will –

- (a) when the duration of their Partnership is NOT fixed, and
- (b) when no provision is made as to whom and how the Partnership will come to an end.

Dissolution : It can be dissolved at any time by any of the Partners notifying his willingness to do so. If the duration or the terms of determination of Partnership can be implied, it cannot be a Partnership at will.

ANSWER-B

Limited Liability Partnerships are bodies corporate and must be registered with the Registrar of LLP appointed under the LLP Act, 2008 after following the provisions specified in the LLP Act, in a similar way to setting up a company with distinct name. The LLP cannot have the same name with any other LLP, Partnership Firm or Company.

To create a LLP proper formation documents must be filed with the registrar along with the necessary filing fees.

Steps to incorporate LLP –

(i) Name reservation

- The first step incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
- Applicant has to file e – Form 1, for ascertaining availability and reservation of the name of a LLP business.

(ii) Incorporate LLP

- After reserving name, user has to file e – Form 2 for incorporating new Limited Liability Partnership (LLP).
- e – Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/ designated partners to act as partners/ designated partners.

(iii) LLP Agreement

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filed with the registrar in e – Form 3 within 30 days of incorporation of LLP.

ANSWER-C

The stated problem falls under the head 'anticipatory breach of contract' as per The Indian Contract Act, 1872. Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived. In such a situation the promisee can claim compensation by way of loss or damage caused to him by the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfilment of the promise by the promisor is over. As per details in the problem, price as contracted Rs. 40 per kg on 10.11.2006 rose to Rs. 50 per kg as on 4.12.2006 and finally to Rs. 53 per kg. On 09.12.2006. The answer to the problem is that

1. Mr. Ramaswamy can repudiate the contract on 04.12.2006 and can claim damages of Rs. 10 per kg viz. Rs. 1,00,000.
2. He could wait till 09.12.2006 and claim Rs. 1,30,000 i.e. Rs. 13 per kg.
3. If the Government, in the interim period i.e. between 04.12.2006 and 09.12.2006 imposes a ban on the movement of the commodity to arrest rise of prices, the contract becomes void and Mr. Ramaswamy will not be able to recover any damages whatsoever.

ANSWER-3

ANSWER-A

Unpaid Seller : According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

- (a) the whole of the price has not been paid or tendered.
- (b) a bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.

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-B

Dormant Company (Section 455 of the Companies Act, 2013)

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of dormant company.

“Inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

“Significant accounting transaction” means any transaction other than –

- (a) payment of fees by a company to the Registrar;
- (b) payments made by it to fulfil the requirements of this Act or any other law;
- (c) allotment of shares to fulfil the requirements of this Act; and
- (d) payments for maintenance of its office and records.

ANSWER-4

ANSWER-A

The following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;

- (a) That the bulk shall correspond with the sample in quality;
- (b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- (c) That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].

Implied Warrants :

1. Warranty of quiet possession [Section 14(b)]: In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.
2. Warranty of freedom from encumbrances [Section 14(c)]: The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour of a third party. If his possession is in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.
3. Warranty as to quality or fitness by usage of trade [Section 16(3)]. An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.
4. Warranty to disclose dangerous nature of goods : Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

ANSWER-B

Dissolution of Firm :The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from action as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 – 44)

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- (d) Subject to agreement between the parties, on the happening of certain contingencies, such as : (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.
- (e) By a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- (f) By intervention of court in case of : (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) wilful or persistent breaches of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss ; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

ANSWER-5

ANSWER-A

Situation	Example
a) Trust or Charge : Beneficiary of a Trust or other interest in specific immovable property, can enforce it even if he is not a party named in the Trust Deed.	A agree to transfer certain properties to be held by T in trust for the benefit of B. B can enforce the agreement even though he is not a party to the agreement. [MK Rapai vs John]
b) Marriage Settlement , Partition and other Family Arrangements, and such agreement is reduced to writing.	Two brothers, on partition of joint properties, agreed to invest in equal shares a certain sum of money for the maintenance of their mother. Held she was entitled to require her sons to make the investment. [Shuppu Ammal vs Subramaniyam]
c) Acknowledgement of liability, or by past performance thereof	X receives money from Y for paying it to Z. X admits the receipt of that amount to Z. Z can recover the amount from X, even though the money is due from Y.
d) Assignment of a contract : Where a benefit under a Contract has been assigned, the assignee can enforce the Contract subject to all equities between the original parties to the Contract.	The assignee of an Insurance Policy.
e) Contracts entered into through an Agent	Where the agent has acted within his capacity and in the name of his principal.
f) Covenants running with land	In cases of transfer of immovable property, the purchaser of land who has notice that the owner of the land is bound by certain conditions or covenants created by an agreement affecting the land, shall be bound

by such conditions, even though he is not a party to the original agreement containing those conditions or covenants.

ANSWER-B

Death of all members of a Private Limited Company, Under the Companies Act, 2013:

The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares". The company will cease to exist only when it is wound up by a due process of law.

Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

ANSWER-6

ANSWER-A

1. Memorandum and Articles of Association, when registered with the ROC, become Public Documents. They can be inspected by any person on payment of a nominal fee at the Registrar's Office.
2. Any person who wishes to enter into a contract with the Company has the means of ascertaining and is presumed to know the powers of Company and extent to which they have been delegated to Directors.
3. Every person dealing with the Company is presumed to have read these documents i.e. MOA & AOA and understood them in their true perspective. This is known as "**Doctrine of Constructive Notice.**"
4. Even if the party dealing with the Company does not have actual notice of the contents of these documents, it is presumed that he has an implied (constructive) notice of them.
5. Person dealing with a Body Corporate, Incorporated Company or a Society, are bound to take notice of disabilities imposed on the body corporate and its Officials by the MOA, AOA or other documents of constitution.

Example : One of the Articles of a Company provides that a Bill of Exchange, to be effective, must be signed by two Directors. If a B/E is signed only by one Director, the Payee cannot claim under the Bill.

ANSWER-B

Quasi Contracts : Under certain special circumstances obligation resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi – contracts'. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another. The salient features of a quasi – contract are :

1. It does not arise from any agreement of the parties concerned but is imposed by law.
2. Duty and not promise is the basis of such contract.
3. The right under it is always a right to money and generally though not always to a liquidated sum of money.
4. Such a right is available against specific person(s) and not against the whole world.
5. A suit for its breach may be filed in the same way as in case of a complete contract.

ANSWER-C

Before attaining majority	Position on attaining majority
a) Liability is confined only to the extent of his share in profits and property of Firm.	a) Decision : Within 6 months of his attaining majority or his obtaining knowledge that he had been admitted to the benefits of the Firm, whichever date is later, the minor Partner has to decide whether he shall remain a Partner or leave the Firm.
b) He is neither personally liable nor is his private estate liable.	b) Notice : He shall give a public notice of his intention, i.e. whether opting to become or not becoming a partner.
c) He cannot be declared insolvent, but if the Firm is declared insolvent, his share in the Firm vests in the Official receiver or Official Assignee.	c) Deemed Partner : Where he fails to give notice, he becomes a Partner in the Firm on the expiry of such period.

PART B
Business Correspondence and Reporting

Answer : 1

(5 Marks)

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

- (b) (i) 1. Research
- (a) human mind processes 500 wpm
 - (b) speaker speaks 150 wpm
 - (c) diff. bet. Words processed by human mind & a speaker
2. A good speaker / Good commun./ listng.
- (a) must retain attention of audience
 - (b) stop not to let mind wander
 - (c) must be a good listener
3. Listening / Requirement of Listening / Listening skills
- (a) hearing with attention
 - (b) being observant
 - (c) Interpreters
 - (d) concentration
 - (e) participation
4. A Good Listener / Good Listening - An Art/ Traits of Good Listening
- (a) gets much more from speaker
 - (b) knows how to prompt and persuade
 - (c) puts speaker at ease
 - (d) helps him articulate
 - (e) facilitates speaker to convey thoughts
5. Effective listening / Barriers To Good Listening
- (a) barriers – phy. /psychological
 - (b) physical – hindrance to hearing

(c) psy. – interpretations & evaluation

Key to Abbreviations

1. diff. bet. – difference between
2. wpm – word per minute
3. commun. – communication
4. listng. – Listening
5. interpretrs. – interpretations
6. phy. – Physical
7. psy. – psychological

Answer : 2

- (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) Opening
(ii) (d) Ambiguous
(iii) He may have been noticed by them before the invoice arrived.
(iv) She enquired / asked of David if he would tell her what it meant.

(c) IMPORTANCE OF WRITTEN COMMUNICATION

Mr. Sinha was appointed as Office Assistant in V.K. Institute of Technology on temporary basis with a condition that his service could be terminated at any stage with one month notice or one month salary. According to the Institute's rule, the temporary employees became permanent automatically after two years of service. Although the Assistant Registrar observed many drawbacks in Mr. Sinha's work and attitude, he warned Mr. Sinha orally and no written communication was issued. When Mr. Sinha completed one year and eleven months' time, the Assistant Registrar forwarded a letter to Director stating that Mr. Sinha's services may be terminated as he had not shown any improvement in his work. Mr. Sinha challenged this in the Court of Law stating that there was no written record against him to prove his inefficiency. Supreme Court finally heard the case and asked the Institute to retain Mr. Sinha. After this incident, the Chairperson of the Institute issued a Confidential Circular to all Directors that in future they should maintain every record of errors made by temporary employees.

Answer : 3

- (a) **Communication Network** refers to the method and pattern used by Members of an organization, to pass on information to other employees in the organization.
- (b) (i) (d)

- (ii) (a)
- (iii) The trustees had converted the place where he lived into a hotel.
- (iv) He asked his manager if he should email that letter again.
- (c) (a) Address should be to group – ‘Hi all’
- (b) Specify date and place of meeting.
- (c) Mention time frame of completion of project.
- (d) State problems being faced – procuring equipment, legal problems, local people protesting against radiation threat, getting required permission from local government bodies etc.
- (e) Ask for viable suggestions – more resources, better software, longer working hours.

Answer : 4

(a) Barriers in communication :

- Physical Barriers
- Cultural Barriers
- Language Barriers
- Technology Barriers
- Emotional Barriers

Technology Barriers : Being a technology driven world, all communication is dependent on good and extensive use of technology. However, there might arise technical issues, like server crash, overload of information etc. which lead to miscommunication or no communication at all.

Language Barriers : It's a cosmopolitan set up, where people of different nationalities move from their home to other countries for work. As a result, it is difficult to have a common language for communication. Hence, diversity gives rise to many languages and it acts as a barrier at times.

(b) (i) inflexible

(ii) Waive a debt

(iii) Storm in a teacup – (d) make a big issue of a small thing

(c) Unemployment : an obstacle in the country's economic growth

- The world economy is facing 2 major challenges – unemployment and poverty.
- Financial crisis caused by unemployment leads to an overall purchasing power resulting in poverty.
- In India, the problems of underemployment, unemployment and poverty have always been the main hindrances to economic development.
- Another colossal problem is the large population.
- A critical aspect is the regional disparity.

- Mass migration from rural to urban regions is adding to the problems of unemployment and poverty.
- Economic reforms, changes in the industrial policy and better utilization of available resources will reduce the problem.
- The government must initiate long term measures for poverty alleviation.

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. (d) in writing
2. (b) to offer bribe
- (ii) The children requested for no homework that day.

(c)

AGENDA	
Items	Speakers
1. Overview of the purpose of Meet	Marketing Head
2. Response / Insights on existing products	Assistant Manager
3. Brainstorm ideas for future initiatives	Open Manager
4. Discussion of Marketing Goals and Strategies	Open House
5. Thank You Note and Next Meeting	Marketing Head

Minutes of the meeting

Date : 25.01.2018

Location : Rain tree , Chennai

Members Present :

Marketing Head,

Assistant Marketing Manager,

Advertising Director,

Digital Marketing Manager,

Social Media Marketing Co – ordinator

Media Head

R & D Manager,

Assistant R& D Manager,

Junior Marketing Analyst

Members Absent

Digital Marketing Executive

Call to Order

- Welcome Note by the Marketing Head and a briefing on purpose of meet.
- Previous Marketing Strategies and performances of products were reviewed and briefly discussed. (Hit Products /Failure Products/ useful points / non – working ideas)
- Discussions on creative advertising ideas that will make the brand stand out.
- New Ideas relating to Search Engine Optimization, Social Media advertising, and blogging were suggested.
- Decisions taken on need for maintenance of accurate data, proper relationship with customers, steps to widen social media advertising.
- Discussion to continue in the Next meeting scheduled on 15.02.2018

Minutes submitted by

Junior Marketing Analyst

ACTION TAKEN REPORT

- R & D Report on various social media platforms giving details on number of users, interaction rate, mobile apps, distinct features, cost of advertising, etc.
- Initiatives taken to hire proficient personnel to handle social media interactions.