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SUGGESTED SOLUTION

CA FOUNDATION NOV'19

**SUBJECT-Business Law and
Business Correspondence and Reporting**

Test Code - CFN 9221

BRANCH - () (Date :)

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PART A : BUSINESS LAW

ANSWER 1(A)

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.

In the instant case, Krish, Kamyra and Ketan jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount. Krish is entitled to receive Rs. 40,000 from Kamyra's estate, and Rs. 2,80,000 from Ketan.

(4 MARKS)

ANSWER 1(B)

As per the facts given, Ravi Private Limited borrowed ` 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum. This act of the company can be said to be null and void.

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.

So is being the act void in nature, there being no existence of the contract between the Ravi Private Ltd. and Mudra Finance Ltd. Therefore, the company Ravi Private Ltd. is liable to pay this debt amount upto the limit prescribed in the memorandum.

Remedy available to the Mudra Finance Ltd.: 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, a company which deals with the other, is deemed to know about the powers of the company.

So, Mudra Finance Ltd. can claim for the amount within the expressed limit prescribed in its memorandum.

(4 MARKS)

ANSWER 1(C)

The differences between the sale and agreement to sell is as follows:

Basis of difference	Sale	Agreement to sell
Transfer of property	The property in the goods passes to the buyer immediately.	Property in the goods passes to the buyer on future date or on fulfilment of some condition.

Nature of contract	It is an executed contract. i.e. contract for which consideration has been paid.	It is an executory contract. i.e. contract for which consideration is to be paid at a future date.
Remedies for breach	The seller can sue the buyer for the price of the goods because	The aggrieved party can sue for damages only and not for the price,
	of the passing of the property therein to the buyer.	unless the price was payable at a stated date.
Liability of parties	A subsequent loss or destruction of the goods is the liability of the buyer.	Such loss or destruction is the liability of the seller.
Burden of risk	Risk of loss is that of buyer since risk follows ownership.	Risk of loss is that of seller.
Nature of rights	Creates Jus in rem	Creates Jus in personam
Right of resale	The seller cannot resell the goods.	The seller may sell the goods since ownership is with the seller.

(4 MARKS)

ANSWER 2(A)

Essential characteristics of a contingent contract: A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events. A contingent contract, on the other hand "is a contract to do or not to do something, if some event, collateral to such contract does or does not happened (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. For example, A contracts to pay B `10,000 if he is elected President of a particular association. This is a contingent contract. The essential characteristics of a contingent contract may be listed as follows:

- (i) There must be a contract to do or not to do something,
- (ii) The performance of the contract must depend upon the happening or non- happening of some event.
- (iii) The happening of the event is uncertain.
- (iv) The event on which the performance is made to depend upon is an event collateral to the contract i.e. it does not form part of the reciprocal promises which constitute the contract. The event should neither be a performance promised, nor the consideration for the promise.
- (v) The contingent event should not be the mere will of the promisor. However, where the event is within the promisor's will, but not merely his will, it may be a contingent contract.

The rules regarding the contingent contract are as follows:

- (1) Contingent contract dependent on the happening of an uncertain future cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void. (Section 32).

- (2) Where a contingent contract is to be performed if a particular event does not happening performance can be enforced only when happening of that event becomes impossible (Section 33).
- (3) If a contract is contingent upon, how a person will act at an unspecified time the event shall be considered to become impossible; when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies. (Section 34, 35).
- (4) The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties (Section 36).

(7 MARKS)

ANSWER 2(B)

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.

(5 MARKS)

ANSWER 3(A)(I)

It is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) It has been exercised in good faith. The test of good faith includes:
 - (a) that the expulsion must be in the interest of the partnership;
 - (b) that the partner to be expelled is served with a notice; and
 - (c) that the partner has been given an opportunity of being heard.

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.

(4 MARKS)

ANSWER 3(A)(II)

Minor is liable to pay for the necessaries supplied to him: This statement is incorrect. The case of necessaries supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act, 1872. A claim for necessaries supplied to a minor is enforceable by law, only against minor's estate, if he possesses. But a minor is not liable for any price that he may promise and never for more than the value of the necessaries. There is no personal liability of the minor, but only his property is liable.

(2 MARKS)

ANSWER 3(B)

According to section 17 of the Indian Contract Act, 1872, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. Hence, in the instant case,

- (a) This contract is valid since as per section 17 mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud. Here, it is not the duty of the seller to disclose defects.
- (b) This contract is not valid since as per section 17 it becomes P's duty to tell Q about the unsoundness of the horse because a fiduciary relationship exists between P and his daughter Q. Here, P's silence is equivalent to speech and hence amounts to fraud.
- (c) This contract is not valid since as per section 17, P's silence is equivalent to speech and hence amounts to fraud.

(6 MARKS)

ANSWER 4(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.

Implied Warrants:

1. *Warranty as to undisturbed possession [Section 14(b)]:* An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.
2. *Warranty as to non-existence of encumbrances [Section 14(c)]:* An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.
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.

(6 MARKS)

ANSWER 4(B)

Implied Authority of Partner as Agent of the Firm (Section 19): Subject to the provisions of section 22, 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.

- (1) The authority of a partner to bind the firm conferred by this section is called his "implied authority".
- (2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-
 - (a) Submit a dispute relating to the business of the firm to arbitration;
 - (b) open a banking account on behalf of the firm in his own name;
 - (c) compromise or relinquish any claim or portion of a claim by the firm;
 - (d) withdraw a suit or proceedings filed on behalf of the firm;
 - (e) admit any liability in a suit or proceedings against the firm;
 - (f) acquire immovable property on behalf of the firm;
 - (g) transfer immovable property belonging to the firm; and
 - (h) enter into partnership on behalf of the firm.

Mode Of Doing Act To Bind Firm (Section 22): In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

(6 MARKS)

ANSWER 5(A)

Position of Mr. D: Mr. D sold some goods to Mr. E for ` 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

Rights of Mr. D: As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

(i) Suit for price (Section 55)

In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.

(ii) Suit for damages for non-acceptance (Section 56): Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

(iii) Suit for interest [Section 61]: If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

(6 MARKS)

ANSWER 5(B)

Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

However, this veil can be lifted which means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company, and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely a question of ownership.

Lifting of Corporate Veil

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- **Trading with enemy:** If the public interest is likely to be in jeopardy, the Court may be willing to crack the corporate shell
- Where corporate entity is used to evade or circumvent tax, the corporate veil may be lifted
- Where companies form other companies as their subsidiaries to act as their agent
- Company is formed to circumvent welfare of employees
- **Where the device of incorporation is adopted for some illegal or improper purpose:** Where the device of incorporation is adopted for some illegal or improper purpose, *e.g.*, to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

(6 MARKS)

ANSWER 6(A)

Validity of agreements

- (a) *Void Agreement:* As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.
- (b) *Void Agreement:* As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.
- (c) *Void Agreement:* As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
- (d) *Void Agreement:* An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.
- (e) *Valid Agreement:* An agreement with alien friend is valid, but an agreement with alien enemy is void.

(5 MARKS)

ANSWER 6(B)

In the given case, along with X, the Manager (A) is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

Partner by holding out (Section 28): Partnership by holding out is also known as partnership by estoppel. Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.

The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases, a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

(4 MARKS)

ANSWER 6(C)

According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that -

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members.

In the instant case, Flora Fauna Limited may be converted into a private company only if the total members of the company are limited to 200.

Total Number of members

(i)	Directors and their relatives	190
(ii)	5 Couples (5*1)	5
(iii)	Others	5
	Total	200

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200

(3 MARKS)

PART B: BUSINESS CORRESPONDENCE AND REPORTING

ANSWER 1 (A)

- (i) D
- (ii) C
- (iii) A
- (iv) B
- (v) D

(5 MARKS)

ANSWER 1 (B)

(i) A. Value of bks. acc. to Anatole France

- (1) not merely printed signs
- (2) reader gives
 - (i) colours
 - (ii) forms
 - (iii) sentiments
 - a. brilliant or boring
 - b. touches our souls

B. Bks. are meant for diff. sections of society

- (1) until recently bks. were read by only intellect.
- (2) meant for all housewives, farmers, artisans, etc.

C. Bks. for 1st gen. learners

- (1) challenge for authors
- (2) need more research in use of lang.
- (3) need for dev. of teaching tech. a. knowledge transfer w/o transmsⁿ loss

D. Publisher's role

- (1) campaigns to persuade
 - a. bks make good presents
 - b. rdng – a relaxing pastime

Key

- 1. acc. - according
- 2. 1st - first
- 3. bks. - books
- 4. gen. - generation
- 5. diff. – different
- 6. lang. - language
- 7. intellect. - intellectuals
- 8. dev. – development
- 9. w/o – without
- 10. transmsⁿ - transmission

Summary

A book can be defined as anything that is bound and printed. However, there can be factors of quality and the mind applied to it that distinguish a book. According to Anatole France, a reader has powers to convert the book into magic; using his brain connect with the words printed in it. No matter how good an author is, the content becomes interesting only if the reader wishes to make it so. Apparently, books have always been associated with the urban sector. One must try to spread the reach to a wider audience, emphasizing the fact that good techniques and language can make book reading the most enjoyable of all pass times.

(2 MARKS)

ANSWER 2 (A)

Visual communication

Communication that happens through visual aids such as signs, graphic designs, colour, illustrations etc is visual communication. It is a powerful medium these days, especially for office presentations. Visuals can also include pie charts, graphs, or any other colourful representation. It adds value to the content and forms a major part of audio visual ppt's.

(2 MARKS)

ANSWER 2 (B)

- (i) (4) continuous
- (ii) (1) eulogize
- (iii) Indirect speech: the policeman asked the stranger who he was.

(3 MARKS)

ANSWER 2 (C)

Language and Gender

The word 'gender' used in two contexts, first for grammatical gender and second biological gender. Language is influenced by gender. Women tend to use more standard language than men (perhaps due to their position in western societies). On the other hand they also tend to be at the forefront of linguistic innovations. A woman tends to good in verbalization.

(5 MARKS)

ANSWER 3 (A)

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. Network helps managers create various types of communication flow according to requirement of the task at hand. Some companies have established and predefined networks of communication for specified venture.

(1 MARK)

ANSWER 3 (B)

- (i) A
- (ii) C

(iii) A pen is used by Rajesh to sketch figures.

(iv) Elders always say that if you work hard, you will succeed. (Universal truth)

(1*4= 4 MARKS)

ANSWER 3 (C)

Cultural Event for Charity

For all employees

This is an official communication informing about a cultural event being organized in the office premises on the coming weekend (6th and 7th Jan, 2018).

The events would be as follows:

- Singing competition
- Dance competition
- Stand up Comedy
- Dumb charades
- Food stalls

Participation fees is `50/ per member. Family and friends are cordially invited.

The proceeds of the event will be given to Aaroyga NGO, working for the benefit of old citizens.

Please get in touch with the HR team for more registration and details. Looking forward to an active participation.

Sheela Mishra

Manager, H R.

(5 MARKS)

ANSWER 4 (A)

- (i) **Cultural barriers:** Understanding cultural aspects of communication refers to having knowledge of different cultures in order to communicate effectively with cross culture people. Understanding various cultures in this era of globalization is an absolute necessity as the existence of cultural differences between people from various countries, regions tribes and, religions, where words and symbols may be interpreted differently can result in communication barriers and miscommunications. Multinational companies offer special courses and documents to familiarize their staff with the culture of the country where they are based for work.

(2 MARKS)

OR

- (ii) **Formal communication:** Formal communication, both oral and written, follows certain rules, principles and conventions in conveying the message. The hierarchy in the organization has to be followed. Formal format, style and language have to be used. The communication pattern can be vertical, horizontal or diagonal.

Vertical: Information can flow upwards or downwards in the organization. Data that is

collected flows up to the top levels of management for review and decision making, while instructions and orders are passed down from the management/ seniors to the subordinates for implementation.

Horizontal: Horizontal communication that involves communication between two parts of the organization at the same level. For example, the managers of a project in a company may hold a regular daily, weekly or monthly meeting to discuss the progress of the project.

(2 MARKS)

ANSWER 4 (B)

- i. 1. Fantasy
- ii. 4. Downgrade
- iii. Shalini ordered her younger sister to go home immediately.

(1*3= 3 MARKS)

ANSWER 4 (C)

Global Warming

The retention of extra heat by the Earth is known as Global warming. It is basically an increase in the amount of greenhouse gases in the air that results in more heat being trapped in the atmosphere. The greenhouse gases include carbon dioxide, methane, water vapour and ozone. This leads to an overall rise in the surface temperature of the Earth.

The temperature of the Earth has increased by about 1-2 degree Fahrenheit in the last 100 years and is continuing to increase further. The warming has led to the decrease of cold nights and increase in warm/summer days. Melting glaciers is also a result of global warming.

The amount of carbon dioxide in air has been increasing at an alarming rate. The main cause of this increase being burning of fossil fuels and deforestation. Production, distribution and combustion of fossil fuel also results in the emission of methane gas.

As responsible citizens of the Earth, we must take measures to curb the problem of global warming and save the environment. Use of renewable sources of energy, like solar energy should be promoted. Solar heater, solar cooker, solar coolers are some devices that run on the energy captured from the Sun. Farmers should be encouraged to use natural fertilizers that provide better yields and are environment friendly. Children in school should participate in 'plant a tree' campaigns. Afforestation is an easy and simple step towards saving our environment. Air pollution should be checked, probably by making catalytic converters compulsory for all vehicles.

If the above measures are followed and every individual pledges to keep the environment clean, problems like global warming can be under control. Let us all pledge to GO GREEN

(5 MARKS)

ANSWER 5(A)

A complete communication conveys all facts and information required by the recipient. It keeps in mind the receiver's intellect and attitude and conveys the message accordingly. A complete communication helps in building the company's reputation, aids in better decision making as all relevant and required information is available with the receiver.

(1 MARK)

ANSWER 5(B)

- (i) c
- (ii) a
- (iii) C
- (iv) D

(1*4= 4 MARKS)**ANSWER 5(C)**

Tabular Agenda:

Time	Topic	Attendees	Speaker	Duration
9:30 am	Introduction and Welcome note	<ul style="list-style-type: none"> • MD • Chief Operating Officer • Head (Admin) • Sr. Manager HR • Manager HR • Executives 	Head HR	5 minutes
9:35 am	<ul style="list-style-type: none"> • Staff Matters • Fresh Appointments and interns in • Sales & Marketing • Transfers • Promotions • Training Approvals • Study Leave Approvals • Cash Rewards 	-do-	Sr. Manager HR	30 mins
10:05 am	Presentation/Discussion on Staff Motivation Programmes	-do-	Chief Operating Officer	15 mins
10:20 am	Tea/Breakfast	Tea/Breakfast		40 mins
11:00 am	Circulation roster for housekeeping staff/ peons	<ul style="list-style-type: none"> • Chief Operating Officer • Head (Admin) • Sr. Manager HR • Manager HR • Executives 	Head(Admin)	15 mins
11:15 am	Open House	-do-	All members	20 mins
11:35 am	Vote of Thanks	All participants	Chief Operating Officer	5 mins

(5 MARKS)