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CA FOUNDATION NOV'19

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

Test Code – CFN 9249

BRANCH - () (Date :)

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

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PART A : BUSINESS LAWS

ANSWER 1(A)

Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d), it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the Chinnaya Vs. Ramayya, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Sohanlal has entered into a contract with Mr. Mohanlal, but Mr. Chotelal has not given any consideration to Mr. Mohanlal but the consideration did flow from Mr. Sohanlal to Mr. Mohanlal on the behalf of Mr. Chotelal and such consideration from third party is sufficient to enforce the promise of Mr. Mohanlal to allow Mr. Chotelal to use 1 acre of land. Further the deed of sale and the promise made by Mr. Mohanlal to Mr. Chotelal to allow the use of 1 acre of land were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Moreover, it is provided in the law that "in case covenant running with the land, where a person purchases land with notice that the owner of the land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller."

In such a case, third party to a contract can file the suit although it has not moved the consideration.

Hence, Mr. Chotelal is entitled to file a petition against Mr. Mohanlal for execution of contract.

(4 MARKS)

ANSWER 1(B)

Essentials of Contract of Sale : The following elements must co – exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

- (i) There must be at least two parties.
- (ii) The subject matter of the contract must necessarily be goods
- (iii) A price in money (not in kind) should be paid or promised.
- (iv) A transfer of property in goods from seller to the buyer must take place.
- (v) A contract of sale must be absolute or conditional [Section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale.

(4 MARKS)

ANSWER 1(C)

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning.

However, **under Section 69**, non-registration of partnership gives rise to a number of disabilities which are as follows:

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than Rs. 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

(4 MARKS)

ANSWER 2(A)

Rules of Auction Sale : Section 64 of the Sale of Goods Act, 1930 provides following rules to regulate the sale by auction :

- (a) **Where goods are sold in lots :** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.
- (b) **Completion of the contract of sale :** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.
- (c) **Right to bid may be reserved :** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.
- (d) **Where the sale is not notified by the seller :** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.
- (e) **Reserved price :** The sale may be notified to be subject to a reserve or upset price; and
- (f) **Pretended bidding :** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

(6 MARKS)

ANSWER 2(B)

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because X,Y and Z are joint promisors.
- (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- (iii) Y also can recover the contribution from Z's assets.

(6 MARKS)

ANSWER 3(A)

Modes of revocation of Offer

- (i) By notice of revocation
- (ii) **By lapse of time:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.
- (iii) **By non-fulfillment of condition precedent:** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.
- (iv) **By death or insanity:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.
- (v) By counter offer
- (vi) By the non- acceptance of the offer according to the prescribed or usual mode
- (vii) By subsequent illegality

(5 MARKS)

ANSWER 3(B)

One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]: The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership :

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the Subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

- Only a natural person who is an Indian citizen and resident in India (Person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year)-
 - Shall be eligible to incorporate a OPC.
 - Shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases. OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

(7 MARKS)

ANSWER 4(A)

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

- To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- To have at least two partners for incorporation of LLP [Individual or body corporate];
- To have registered office in India to which all communications will be made and received;
- 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.
- 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.
- 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.
- LLP Name.

(5 MARKS)

ANSWER 4(B)

Quasi-Contracts: Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as “quasi-contracts” as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience.

The salient features of quasi-contracts are:

- such a right is always a right to money and generally, though not always, to a liquidated sum of money;
- does not arise from any agreement between the parties concerned but the obligation is imposed by law and;
- the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

(3 MARKS)

ANSWER 4(C)

Effect of notice to an acting partner of the firm

According to Section 24 of the Indian Partnership Act, 1932, notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Thus, the notice to one is equivalent to the notice to the rest of the partners of the firm, just as a notice to an agent is notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business. Only then it would constitute a notice to the firm.

(2 MARKS)

ANSWER 4(D)

Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership."

Stating the legal position of a minor partner after attaining majority, **When he opts to become a partner of the same firm.**

If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) of the Indian Partnership Act, 1932, are as follows:

- (a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- (b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

(2 MARKS)

ANSWER 5(A)

The House of Lords in Salmon Vs Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.

- (1) 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 façade 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.
- (2) 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. The same was upheld in Re Sir Dinshaw Maneckji Petit AIR 1927 Bom. 371 and Juggilal vs. Commissioner of Income Tax AIR (1969) SC(932).

(6 MARKS)

ANSWER 5(B)

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.

(6 MARKS)

ANSWER 6(A)

Generally, the effect of the death of a partner is the dissolution of the partnership, but the rule in regard to the dissolution of the partnership, by death of partner, is subject to a contract between the parties and the partners are competent to agree that the death of one will not have the effect of dissolving the partnership as regards the surviving partners unless the firm consists of only two partners. In order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the light of the provisions of the Act and the facts of the question, Mr. X (creditor) can have only a personal decree against the surviving partners (Mr. A and Mr. B) and a decree against the partnership assets in the hands of those partners. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. Hence, the legal heirs of Mr. C cannot be held liable for the dues towards Mr. X.

(4 MARKS)

ANSWER 6(B)

A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.

Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.

Also, as per section 28 of the Indian Partnership Act, 1932, 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.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

(4 MARKS)

ANSWER 6(C)

The essentials of Undue Influence as per the Indian Contract Act, 1872 are the following:

- (1) Relation between the parties:** A person can be influenced by the other when a near relation between the two exists.
- (2) Position to dominate the will:** Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:
 - (a) Real and apparent authority:** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.
 - (b) Fiduciary relationship:** Where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client, husband and wife, creditor and debtor, etc.
 - (c) Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.
 - (d) Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money lending transactions and in gifts.
- (3) The object must be to take undue advantage:** Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.
- (4) Burden of proof:** The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

(4 MARKS)

PART B : BUSINESS CORRESPONDENCE AND REPORTING

ANSWER 7(A)

(1*5 = 5 MARKS)

- (1) Option C
- (2) Option D
- (3) Option B
- (4) Option A
- (5) Option C

ANSWER 7(B)

(i) (I) Loc & Origin

- 1) Built around 1268 AD
- 2) At Somnathpur.
 - a) A small village
- 3) Commsnd by **Soma Dandanayaka or Somnath,**
 - a) Mnstr of Hoyasala King of Karnataka, **Narasimha, III**
- 4) almost in orgnl condtn
- 5) Houses three shrines
 - a) Ddictd to three incrntrns of Krishna
 - i. Venugopala,
 - ii. Janardana
 - iii. Prasanna Keshava.

(II) Strctrl Details

- 1) has three Shikaras.
- 2) stands on a star-shaped-raised platform with 24 edges.

(III) Scpltrl Details

- 1) Intrct crvngs on outer walls dpctng
 - a) cprsnd elephants,
 - b) chrgng horsemen,
 - c) stylzd flowers,
 - d) warriors, musicians,
 - e) crocodiles and swans.
- 2) Vrtcl pnls dpctng
 - a) figures of gods & goddesses in many incrntrns
 - i. hvng elbrt ornmnttn
 - b) nymphs caryng ear of maize – a smbl of prsprty
- 3) doors and three elgntly carved towers

Key Used:

Loc: location

Commsnd: commissioned

Orgnl: original

Cndtn: condition

Mnstr: minister

Ddictd: dedicated

Incrntrns: incarnations

Strctrl: structural

Scpltrl: sculptural

Intrct: intricate
Crvngs: carvings
Dpctng: depicting
Cprsnd: caparisoned
Chrgng: charging
Stylzd: stylized
Vrtcl: vertical
Pnls: panels
Dpctng: depicting
Havng: having
Elbrt: elaborate
Ornmnttn: ornamentation
Caryng: carrying
Smb1: symbol
Prsprty: prosperity
Elgntly: elegantly

(3 Marks)

(b) (ii) Summary

The Somnathpur temple, built around 1268 AD, by the Hoysalas of Karnataka is an epitome of exquisite craftsmanship. Commissioned by the Dandanayak. The temple is dedicated to three incarnations of Lord Krishna - Venugopala, Janardana and Prasanna Keshava. It stands almost in its original condition on a star shaped raised platform. It has three shikaras. The outer walls are replete with intricate carvings of caparisoned elephants, charging horsemen, stylized flowers, warriors, musicians, crocodiles and swans. Vertical panels depict figures of Gods and Goddesses in various incarnations and symbols of , prosperity such as nymphs carrying ear of maize. The beautifully carved three elegant towers and doors are worth seeing and appreciating.

(2 Marks)

ANSWER 8(A)

Vertical and Chain Network

Vertical network: The vertical network is a formal network. It is usually between a higher ranking employee and a subordinate. This is a two-way communication in which immediate feedback is possible.

Chain Network: The communication pattern that follows the chain of command from the senior to junior is called the chain network. Communication starts at the top, like from a CEO, and works its way down to the different levels of employees.

(2 Marks)

ANSWER 8(B)

- (i) **Crooked = Twisted**
- (ii) Predicament = Ease
- (iii) Pari told me she had been living in London since last December.

(1*3 = 3 Marks)

ANSWER 8(C)**Précis****Education for handicapped children**

Education opportunities for handicapped children are sparse as compared to the normal children. Expenditure on their education is treated as a wastage and rather non-productive. The view that education for handicapped requires higher costs and specialized people has led to discouragement towards development of measures towards the same. The National Education Policy recommends integrating the education for handicapped with the normal children with the help of specialized teachers and other aids. Training of teachers and necessary infrastructure shall help the handicapped children and shall relieve their parents regarding worries about their education.

(5 Marks)

ANSWER 9(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 9(B)

- (i) Complain about something that cannot be rectified.
- (ii) Rely on outward appearances.
- (iii) Thousands of tourists visit the Grand Canyon every year.
- (iv) Enthral

(1*4 = 4 Marks)

ANSWER 9(C)

Kalu Sarai,

New Delhi

August 09, 2019

MR. Ramesh

Director, Sales and Marketing XYZ Pvt. Limited

Dear Sir/Ma'am,

Sub: Order Confirmation (No: XYZ/0012/Jun 2019)

I would like to take the opportunity to thank you for giving us a business opportunity. It is an honour for us to be serving your esteemed organization that enjoys a formidable reputation.

I would like to inform you that the 1800 units of machinery ordered vide Order no. XYZ/0012/Jun 2019, will be delivered as per the mutually decided date. In addition, our experts would come to install the machinery and give a detailed demo of its working. We would also provide a free for the next two years, taking care of any wear and tear or products damage. The products has two year warranty period.

For any other query regarding the machinery ordered and its functioning, please feel free to contact us. We would be happy to serve you at the earliest.

Thanks and Regards,

Mr. Khan

Sr. Manager, Sales and Marketing, Drive Pvt. Ltd.

(5 Marks)

ANSWER 10(A)

A good listener does not only listen to the spoken words, but observes carefully the non- verbal cues to understand the complete message. He absorbs the given information, processes it, understands its context and meaning and forms an accurate, reasoned, intelligent response. The listener has to be objective, practical and in control of his emotions. Often the understanding of a listener is coloured by his own emotions judgements, opinions, and reactions to what is being said.

(2 Marks)

ANSWER 10(B)

- (i) The student questions are always answered by the teacher.
- (ii) The cleaning crew vacuums and dusts the office every night.
- (iii) She said that her father had come the day before.

(1*3 = 3 Marks)

ANSWER 10(C)

Hints for Article

- Both play an equally significant role
- Only physical fitness keeps the body in shape
- Six packs, abs, muscular body.....all look impressive but does running and doing cardio take care of the mind.
- Is it fine to be dumb in the head and have a strong, finely chiselled body?
- Mind is the hard drive of a human body. Data stored, collected, used etc.
- An active mind ensures proper functioning of the whole system
- Quote like, " an empty mind is a devil's workshop".
- However, physical prowess and mental agility both have their own specific and need based roles.

(5 Marks)

ANSWER 11(A)**Steps in the process of communication**

- (i) The purpose or reason
- (ii) The content or message
- (iii) The medium used for conveying the message (internet, written text, speech etc)
- (iv) Transmitting the message
- (v) Messages are often misinterpreted due to external disturbances. These factors disrupt communication
- (vi) Receiving the message
- (vii) Deciphering/decoding the message
- (viii) Interpreting and figuring out what the real message is.

(2 Marks)**ANSWER 11(B)**

- (i) Option D
- (ii) Option A
- (iii.) The athlete said that he could break all records.

(1*3 = 3 Marks)**ANSWER 11(C)**

Date: July 09, 2019

Venue: Conference Hall, 2nd Floor,

Meeting Started at 02:00 PM

In attendance: Mr. Ram Swaminathan, Head, Sales and Marketing, Mr.Prabhu Das, Product Head, Product lead, four members of the sales team.

Mr. Ram Swaminathan, Head of Sales and Marketing informed the agenda of the meeting i.e., the sales decline in the product.

Ms. Reena Mathur, Sales lead gave a detailed analysis of the sales figures for the one year.

Her team including Mr. A. Mr. B, Ms. C, Ms. D elaborated on the market trend target customers and their needs.

Mr. Prabhu Das, Product Head expressed concern over the matter, discussed a few changes in the sales strategy.

All the participants contented to the concerns raised and decided to submit their reports.

The Head of Sales and Marketing proposed a vote of thanks and declared the next meeting to discuss reports to be held on August 02, 2019.

ATR to be submitted by July 26, 2019 to the Head Sales and Marketing.

(5 Marks)