



IPCC – November 2017

ALLIED LAW

Test Code – INJ 8015

Branch (MULTIPLE) (Date : 11.06.2017)

(50 Marks)

Note: All questions are compulsory.

Question 1

Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is present:

1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

(3 marks)

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. **(2 Marks)**

Accordingly in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale. **(1 Mark)**

Question 2

- a. The cheque in the given case was crossed generally and marked 'Not Negotiable'. Thereafter, the cheque was lost or stolen and came into the possession of Vishnu, who takes it in good faith and gives value for it. **(1 mark)**
- b. Section 130 of the Negotiable Instruments Act, 1881 provides that a person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable', shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. **(1 mark)**
- c. In view of these provisions, Vishnu, even though he was a holder in due course, did not acquire any title to the cheque as against its true owner. The addition of the words 'not negotiable' entirely takes away the main feature of negotiability, which is, that a holder with a defective title can give a good title to a subsequent holder in due course. **(1 mark)**
- d. Vishnu did not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque. Therefore, as regards the true owner, Vishnu was in no better position than the transferor. Vishnu is also liable to repay the amount of the cheque to the true owner. He can, however, proceed against the person from whom he took the cheque. **(1 mark)**
- e. In the given case, both the collecting banker and the paying bankers would be exonerated. Since the collecting banker, in good faith and without negligence, had received payment for Vishnu, who was its customer of the cheque which was crossed generally, the banker would not be liable, in case the title proved to be defective, to the true owner by reason only of having received the payment of the cheque for his customer (as per Section 131). Since the paying banker on whom the crossed cheque was drawn, had paid the same in due course, the banker would also not be liable to the true owner (as per Section 128). **(2 mark)**

Question 3

- a. Where, in respect of any accounting year referred to in Section 10 of the Payment of Bonus Act, 1965, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum 20% of such salary or wage. **(4 marks)**
- b. In the given case therefore, the company will be free to give bonus at any rate exceeding 8.33% upto a maximum of 20% of the salary or wage earned by the employees during the accounting year. From the facts given, it may be presumed that the bonus at 20% may be payable during the Financial Year 2015 - 2016. **(2 marks)**
- c. However, in relation to the maximum bonus payable the most important term to understand is "allocable surplus". The eligibility for maximum bonus arises from the "allocable surplus" but is not limited by it, as the allocable surplus may justify a bonus at a rate higher than 20% but bonus will still be limited to 20%. **(2 marks)**

(8 marks)

Question 4

- a. The Provident Fund "claims" complete in all respects submitted along with the requisite documents are required to be settled and the benefit amount to be paid to the beneficiaries within 30 days from the date of its receipt of the complete "claims" by the Commissioner. **(2 Marks)**
- b. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. **(2 Marks)**
- c. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner. **(2 Marks)**

Question 5

Forfeiture of Gratuity:

- a. In accordance with the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, if the services of any employee have been terminated for any act, willful omission, or negligence causing any damage or loss to or destruction of, property belonging to the employer, the gratuity shall be forfeited to the extent of the damage or loss so caused. **(1/2 mark)**
- b. Further, if the services of such an employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment, the gratuity payable to the employee may be wholly or partially forfeited. **(1/2 mark)**
- c. Under section 4(1) of the Payment of Gratuity Act, 1972 gratuity is payable to an employee on termination of employment provided he completes five years of continuous service with the employer. The condition of the completion of five years' continuous service is not essential in case of the termination of the employment of any employee due to death or disablement. **(1/2 mark)**
- d. The gratuity payable is an obligation of the employer and any forfeiture in full or part of the gratuity payable to an employee can be made only in terms of section 4(6). **(1/2 mark)**

The correctness of the decision taken by Peacock Ltd. in the given case, regarding forfeiture of the gratuity to its employees X and Y may be tested in the light of Section 4(6) of the Payment of Gratuity Act, 1972 as referred above.

- (i) The offence of theft committed by X, under law involves moral turpitude and his gratuity stands wholly forfeited in view of Section 4(6) of the Act. It is presumed that

such theft is committed by X in the course of his employment. **(2 Marks)**

- (ii) Y had wrongfully occupied the company's quarter after the termination of his employment for six months. Y may have caused a deliberate loss to the company by his wrongful occupation for 6 months as the quarter could not be given to another employee and the company may have incurred the cost of rent in such case. Hence, the company is entitled to charge the rent from him and after adjusting other dues the remaining amount of gratuity may be paid. **(2 Marks)**

Question 6

As per sub section (1) of section 2A of the Payment of Gratuity Act, 1972, an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service. This uninterrupted service will include the period during which the employee could not work on account of sickness, accident, leave, lay-off, strike or a lockout or cessation of work not due to any fault of the employee. **(1/2 mark)**

Further sub section (2) of section 2A states that where any employee (not being an employee employed in a seasonal establishment) is not in continuous service (as defined in sub section 1) for any period of one year, he shall be deemed to be in continuous service under the employer for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

- (i) one hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week, and
(ii) two hundred and forty days, in any other case. **(1 ½ Marks)**

Thus, as per the above provisions-

- (1) 'K' will be considered to be in continuous employment during the year 2015-16 for a period he worked + the period for which he was on leave due to an accident = 150 + 45 = 195 days. Since, Bannari Ltd. works for five days in a week and 'K' has worked for more than 190 days, he will be entitled for gratuity. **(2 Marks)**

- (2) In case Bannari Ltd. works for 6 days in a week then 'K' will not be considered to be in continuous employment during the period as he works for 195 days which is less than 240 days. Hence, he will not be entitled for gratuity. **(2 Marks)**

[Assumption: In the second situation, it can also be presumed that 'K' is employed to work below the ground in a mine. In such a case, K will be entitled to gratuity as he has worked for 195 days (i.e. more than 190 days)].

Question 7

Suit for Injunction

- a. As per the Indian Contract Act, 1872, a suit for injunction is a remedy provided to the aggrieved party on the breach of contract. The term injunction may be defined as an order of the courts restraining a person from doing something which he promised not to do. **(1 mark)**
- b. In general, injunction is a court order by which an individual is required to perform, or is restrained from performing, a particular act. In relation to the law of contract, injunction is a useful weapon for the purpose of encouraging performance of a contract involving personal services. **(1 mark)**
- c. When a party makes a breach of contract, the injured party can, under certain circumstances, apply to the Court for issuing of an injunction with a view to prohibiting the party for making breach of the contract or doing something against the term of contract. **(1 mark)**
- d. The power of Court to grant injunction is discretionary. However the Courts generally grant injunctions in the following cases:

- (i) **In case of clear negative stipulation:** Sometimes there is clear negative stipulation in the contract that a party will not do a particular thing. In such cases, if that party undertakes to do the same thing and makes a breach of contract, the Court may grant an injunction on the request of the aggrieved party.
- (ii) **In case of inferred negative stipulation:** Where in the contract there is no clear negative stipulation but it can be inferred from it that there existed a negative stipulation, the court may also grant an injunction. But the Courts generally go by the distinct negative stipulation.
- (1 mark)**

Question 8

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. **(2 Marks)**

On applying the above provision in the given cases-

- (1) 'M' is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein. **(1 Mark)**
- (2) No, 'M' is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name. **(1 Mark)**

Question 9

The problem stated in the question is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 53. The section provides that, once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus, any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud.

(3 Marks)

Thus, applying the above provisions it is quite clear that 'F' who originally induced 'G' in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as 'F' himself was a party to the fraud.

(1 Mark)
