



J.K. SHAH[®]
TEST SERIES
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SUGGESTED SOLUTION
IPCC NOVEMBER 2016 EXAM

LAW

Test Code - I N J 1 0 3 4

BRANCH - (MUMBAI) (Date : 29.05.2016)

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Answer-1 (a) :

The Payment of Bonus Act, 1965- According to Section 2 (13) and Section 8, every employee of an establishment covered under the Payment of Bonus Act, 1965 is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year and on a salary less than Rs. 10,000 per month. **(2 Marks)**

- i. Employee employed by Universities and other Educational Institutions are not entitled for bonus because the employees of such institutions are excluded from the operation of the Act as per section 32 of the Payment of Bonus Act, 1965. **(1 Mark)**
- ii. According to section 14 of the Payment of Bonus Act, 1965, an employee shall be deemed to have worked in an establishment in any accounting year in the following cases:
 - being laid off under an agreement or under the Industrial Disputes Act, 1947, or any other applicable law
 - on leave with salary / wages
 - absent due to temporary disablement caused by an accident in the course of employment
 - on maternity leave with salary / wages

Since an employee reinstated without wages for the period of dismissal does not fall in any of the mentioned cases, in fact, use of word dismissal here presumes that he was not laid off but terminated and so he is not entitled to bonus for the period of dismissal. **(2 Marks)**

Answer-1 (b) :

1) a) The Indian Contract Act, 1872 does not define the word 'Agency'. However the word 'Agent' is defined "as a person employed to do any act for another or to represent another in dealings with third persons. The third person for whom the act is done or is so represented is called "Principal". **(2 Marks)**

b) Salient features of agency

Following are the four salient features of agency

- (i) Basis-The basic essence of 'agency' is that the principal is bound by the acts of the agent and is answerable to third parties.
- (ii) Consideration not necessary-Unlike other regular contracts, a contract of agency does not need consideration.
- (iii) Capacity to employ an agent- A person who is competent to contract alone can employ an agent. In other words, a person in order to act as principal must be a major and of sound mind.
- (iv) Capacity to be an agent-A person in order to be an agent must have authority to contract. In other words, an agent brings about a contractual relationship between the principal and third persons. **(4 Marks)**

2) According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, Dharmesh gets a good title to the watch . Mitesh is not liable to Ramesh for his negligence in the performance of his duties. **(2 Marks)**

Answer-2 (a) :

- (a) Right of subrogation: the surety gets the right of subrogation for all payments and performances he is liable. This right would accrue only when the surety has paid the amount of liability in full. **(1 Mark)**
- (b) Right to securities: surety is entitled for all securities which the debtor has provided to creditor whether surety is aware of it or not. Where a creditor loses any of the security by default or

negligence the liability of the surety abates proportionately. If a creditor does not hand over the securities to surety he can be compelled to do so. **(1 Mark)**

- (c) Right to sue: surety has a right to require the creditor to sue for and recover the guaranteed debt. This right of surety is known as right to file a 'Quia timed action' against the debtor. There is of course an inherent risk of having to indemnify the creditor for delay and expense. **(1 Mark)**
- (d) Right to dismiss: surety has a right to call upon the creditor to dismiss the person from service if the person whose fidelity is guaranteed by surety is persistently dishonest. **(1 Mark)**
- (e) Right to claim set-off: surety has a right of set off against the principal debtor exactly as a creditor would have. **(1 Mark)**
- (f) Right of option on the claim of the funds: surety also can compel the creditor where he has claim on two funds, to resort to that fund first on which surety has no claim. **(1 Mark)**
- (g) Right to claim : surety can claim that he is not liable on the guarantee to the creditor, if it can be proved that principal debtor was incapable of entering into a contract, say because he was a minor. **(1 Mark)**

Answer-2 (b) :

Essential Elements of a Promissory Note:

1. Must be in writing.
2. Promise to pay: The instrument must contain an express promise to pay.
3. Definite and unconditional: The promise to pay must be definite and unconditional. If it is uncertain or conditional, the instrument is invalid.
4. Signed by the maker: The instrument must be signed by the maker, otherwise it is incomplete and of no effect. Even if it is written by the maker himself and his name appears in the body of the instrument, his signature must be there.
5. Certain parties: The instrument must point out with certainty as to who the maker is and who the payee is. When the maker and the payee cannot be identified with certainty from the instrument itself, the instrument, even if it contains an unconditional promise to pay, is not a promissory note.
6. Certain sum of money: The sum payable must be certain and must not be capable of contingent additions or subtractions.
7. Promise to pay money only: The payment must be in the legal tender money of India. **(4 Marks)**
 - (i) The payment to be made in fifteen days after the death of Rahul. Though the date of death is uncertain, it is certain that Rahul shall die. Therefore the instrument is valid. **(1 Mark)**
 - (ii) The sum payable is not certain within the meaning of Section 4 of the Negotiable Instruments Act, 1881- Hence the Promissory Note is not a valid one. **(1 Mark)**

Answer-3 (a) :

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') extends to the whole of India except the State of Jammu & Kashmir. **(1 Mark)**

Subject to the exceptions contained in Section 16 (Act not to apply to certain establishments), this Act applies to the following entities, namely :

- (a) every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed ; and **(1 Mark)**
- (b) any other establishment which employs 20 or more persons or class of such establishments which the Central Government may, by notification in Official Gazette specify in the behalf. **(1 Mark)**

- (c) The Central Government may, after giving not less than 2 months' notice of its intention to do so, apply the provisions of this Act to any establishment with less than 20 persons in the employment. (1 Mark)

An establishment in which 20 or more persons are employed on any day, must continue to be governed by this Act, inspite of the fact that the number of persons employed therein falls below 20. (1 Mark)

Answer-3 (b) :

Contribution to Provident Fund under the EPF and Miscellaneous Provisions Act, 1952: Section 6 of the EPF and MP Act, 1952 regulates contribution to Provident Fund Scheme established under the Act. The employer's contribution shall be 10% of the basic wages, dearness allowance and retaining allowance, if any payable to each of the employees whether employed by him directly or by or through a contractor. (2 Marks)

The employee's contribution shall be equal to the contribution payable by the employer in respect of him. (2 Marks)

In case the employee so desires, he may contribute an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section. (1 Mark)

Dearness allowance includes cash value of any food concession allowed to the employees. Retaining allowance means the sum paid for retaining the service, when the factory is not working. The Central Government may by notification make the employer's contribution equal to 12% for certain establishments class of establishments. (1 Mark)

Answer-4 (a) :

Under section 6(1), each employee who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (1) of Section 4. The time, form and manner in case of employees in establishment where Central Government is 'Appropriate Government, are as under:

- a. nomination shall be made in form 'F' in duplicate;
- b. Nomination shall be given to employer or sent by registered post. The employee should get proper receipt or acknowledgement from employer who shall fill details in the form and return one copy to the employee.
- c. Nomination shall be submitted within 30 days after completion of service of one year.
- d. An employee who did not have family but acquired family later should submit nomination form in duplicate in form G within 90 days after acquiring family.
- e. Notice of change in nomination shall be filed in form H. (4 Marks)

Answer-4 (b) :

Gratuity shall be payable to an 'employee' on the termination of his employment after he has rendered continuous service for not less than five years –

- On his superannuation, or
- On his retirement or resignation, or
- On his death or disablement due to accident or disease; (2 Marks)

1. 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. Generally, it is payable to the employee himself. However, in case of death of the employee it shall be paid to his nominee or if no nomination has been made, to his heirs. (1 Mark)

2. By the change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employees; it was held in the case of Pattathurila K. Damodaran Vs M.Kassim Kanju (1993) I LLJ 1211 (Ker). (1 Mark)
3. An employee resigning from service is also entitled to gratuity; (Texmaco Ltd. Vs Sri Ram Dhan 1992 LLR 369(Del) and non-acceptance of the resignation is no hurdle in the way of an employee to claim gratuity; (Mettur Spinning Mills Vs Deputy Commissioner of Labour, (1983) II LLJ 188). (1 Mark)

Answer-4 (c) :

According to Section 4 (1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease. (1 Mark)

The proviso to the sub section states that the condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section. (1 Mark)

Disablement has been explained as such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement. (1 Mark)

The given problem fulfils all the above requirements as stated. Therefore, Eshan is entitled to recover gratuity after becoming permanently disabled and continuous service of five years is not required in this case. Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year. (1 Mark)