



J.K. SHAH[®]
TEST SERIES
Evaluate Learn Succeed

SUGGESTED SOLUTION

IPCC NOVEMBER 2016 EXAM

LAW

Test Code - I N J 1 0 6 0

BRANCH - (MULTIPLE) (Date :14.08.2016)

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

Tel : (022) 26836666

Answer-1 (a) :

In addition to the two important duties of having to take care of the goods bailed and being responsible for loss/injury/damage to goods, bailee has other following **duties under the Act.:**

- (i) Bailee has no right to make unauthorized use of goods bailed
- (ii) Bailee has no right to mix the goods bailed with his own goods without the consent of the bailor.
- (iii) Bailee has to return the goods on expiration of period of bailment
- (iv) Bailee has a duty to return any extra profit accruing from goods bailed.
- (v) Bailee has duty not to do anything inconsistent with the condition of bailment.

(3 Marks for any 3)

Rights of bailee: The bailee has the following rights [These rights are also the duties of the bailor]-

- (i) to claim compensation for any loss arising from non-disclosure of known defects in the goods
- (ii) to claim indemnification for any loss or damage as a result of defective title.
- (iii) to deliver back the goods to joint bailors according to the agreement or directions
- (iv) to deliver the goods back to the bailor whether or not the bailor has the right to the goods
- (v) to exercise his 'right of lien'. This right of lien is a right to retain the goods and is exercisable where charges due in respect of goods retained have not been paid. The right of lien is a particular lien for the reason that the bailee can retain only these goods for which the bailee has to receive his fees/remuneration.
- (vi) to take action against third parties if that party wrongfully denies the bailee of his right to use the goods

(3 Marks for any 3)

Answer-1 (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-2 (a) :

According to section 4 of the Act, A promissory note is an instrument (not being a bank note or a currency-note) in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. **(2 Marks)**

Based on the above conditions in accordance with the definition of a promissory note, the answers to the two problems is as under:(i) It is not a promissory note in the first case, since there is no promise to pay.(ii) In the second case also it is not a promissory note since as there is probability that Yadvin may not marry. **(2 Marks)**

Answer-2 (b) :

- i. The statement is false as the maximum bonus payable to employees under Section 11 is 20% of salary, irrespective of the available surplus being more. **(1 Mark)**
- ii. The statement is false as under Section 2(21), "salary or wage" includes dearness allowance. **(1 Mark)**
- iii. The given statement is Incorrect. According to Section 31A of the payment of Bonus Act, 1965 any such agreement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right to receiving minimum bonus. **(2 Marks)**

Answer-2 (c) :

- i. The statement is false as under Section 2(1), the accounting year in relation to a corporation means the year ending on the day on which the books and accounts of the corporation are to be closed and balanced. It does not mean therefore, the year commencing on 1st of April. **(2 Marks)**
- ii. The statement is true as a part-time employee is engaged on regular basis and thus is eligible for bonus [Automobile KarmchariSangh Vs. Industrial Tribunal (1970) 38 FJR 268]. **(1 Mark)**
- iii. The statement is true as per Section 17 of the Payment of Bonus Act, 1965. **(1 Mark)**

Answer-3 (a) :

The Executive Committee shall, under section 5AA (2) consist of the following persons as members, namely:

- (a) a Chairperson, appointed by the Central Government from amongst the members of the Central Board; **(1 Mark)**
- (b) two persons appointed by the Central Government out of the members of the Central Board who had been appointed from amongst its officials; **(1 Mark)**
- (c) three persons appointed by the Central Government from the members of the Central Board as are appointed to represent the state governments as specified by the Central Government in this behalf
- (d) three persons appointed by the Central Government representing the employers of the establishments to which the scheme applies and who had been appointed in the Central Board
- (e) three persons appointed by the Central Government representing the employees in the establishments to which the scheme applies and who had been appointed in the Central Board
- (f) the Central Provident Fund Commissioner of Employees' Provident Fund Organization Further, under Section 14, the days when an employee has been on maternity leave with salary or wages during the accounting year will be included in calculating the total number of days the employee has worked during the accounting year, for the purpose of payment of bonus. **(1 Mark)**

Answer-3 (b) :

Under section 7L (1) the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the orders appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order as the case may be, after taking additional evidence, if necessary.

Under sub section (2) a Tribunal may at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record amend any order passed by it under sub-section (1) and shall make such amendment in the order if the mistake is brought to the notice by the parties to the appeal. However, an amendment which has the effect of enhancing the amount due from, or otherwise increasing

the liability of, the employer shall not be made unless the Tribunal has given notice to him of its intention to do so and has allowed him reasonable opportunity of being heard. (2 Marks)

Further, under sub section (3) a Tribunal shall send a copy of every order passed under this section to the parties to the appeal. Section 7L (4) further provides that any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law. In short, the order of the Tribunal shall be final and binding on all parties concerned. (1 Mark)

Answer-4 (a) :

Reduction and forfeiture of Gratuity: Under Section 4 (6)(a) of the Payment of Gratuity Act, 1972, in the case of damage, loss or destruction of property of employer, due to the willful omission or negligence of the employee, the amount of gratuity to the extent of loss or damage shall be forfeited by the employer.(2 Marks)

Further, under section 4(6)(b)the gratuity payable to an employee may be wholly or partially forfeited, where the services of an employee are terminated on the ground of: (i) riotous or disorderly conduct or act of violence; or(ii) committing an offence involving moral turpitude in the course of his employment.Theft is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act shall be wholly forfeited in view of Section 4(6)(b)(ii). [Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central), (1987) 70 FJR 11 (Kern.)] (2 Marks)

Answer-4 (b) :

The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act-

- (1) If in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. (2 Marks)
- (2) If in the opinion of the appropriate Government, such employee or class of employees are, in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. (1 Mark)
- (3) A notification issued under Sub-Section (1) or Sub-Section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially, affect the interests of any person. (1 Mark)

The provisions of Section 5 of the Act empowers the appropriate Government to exempt any employer or the class of employers as well as the employee or the class of employees from the application of the Act provided that if there are existing beneficial provision regarding gratuity of the employees in comparison with the provisions of the Act it may be notified with retrospective effect but not before the date of commencement of the Act without any type of prejudication at all. (1 Mark)

Answer-5 :

Family: In the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any; (1 Mark)

In this Act, unless the context otherwise requires :

- (a) "Appropriate Government" means :
 - (i) in relation to an establishment belonging to, or under the control of Central Government or in relation to an establishment connected with 'a railway' company, a major port, a mine or an oilfield

or a controlled industry, or in relation to an establishment having departments or branches in more than one State, the Central Government ; and

(ii) in any other case, the State Government. **(1 Mark)**

As per the provisions of the Act retirement: Means termination of the service of an employee otherwise than on superannuation; **(1 Mark)**

Superannuation: In relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment. [Section 2 (r)] **(0.5 Mark)**

Wages: Means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes D.A. [Section 2 (s)] Free food supplied to an employee is merely an amenity. Hence its value cannot be included in the wages for the purpose of calculating the amount of gratuity payable under the Act. [N. Sivasadan v. Appellate Authority under the Payment of Gratuity Act(1997)1 LLJ1155 Mad DB] **(1 Mark)**

1. False. In case of female employee, widow and children of her predeceased son will be included and not that of Daughters. Thus Mr Kajool Kapoor's daughter's husband and children will be not included in the Family **(1 Mark)**

2. False. As the M/s Mafatlal is controlled by Central Government, Appropriate Government will be Central Government. **(0.5 Mark)**

3. False. The given definition is of Superannuation and not retirement. Retirement is defined in above provisions. **(0.5 Mark)**

4. False. Due to the case law, Free food supplied to the employee, it will not get included in Wages. **(0.5 Mark)**