



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

LAW

Test Code - I N J 1 1 0 1

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Answer-1 (a) :

An Agreement is a promise or a commitment or set of reciprocal promises or commitments. An Agreement involves an offer or proposal by one person and acceptance of such offer or proposal by another person. If the agreement is capable of being enforced by law then it is a contract. Agreements which are not legally enforceable are not contracts but remain as void agreements or as voidable agreements which are enforceable by only one of the parties to the agreement.

- a) Based on the above definition of agreement, the answer to the given question will be: No. "Jagdish" cannot sue "Shahrukh" for his loss. Because the agreement was a kind of social nature and lacked the intention to create legal relationship. (2 Marks)
- b) The term consensus ad idem can be understood as identity of minds in understanding i.e. they agree to the same thing in the same manner. (2 Marks)

Answer-1 (b) :

Finding is not keeping. The finder must make reasonable efforts to locate the real owner and may also spend reasonable money in taking care of the goods found. However, he earns certain rights also as against the goods found as well as the owner of those goods. His rights are: (2 Marks)

- (1) He has a right of lien over the goods for his expenses. But he has no right to sue the owner for any such compensation (Section 168). (1 Mark)
- (2) He can sue for any specific reward, which the owner has offered for the return of goods (Section 168). (1 Mark)
- (3) He can even sell the goods under the following circumstances:(a) If the owner cannot with reasonable diligence be found;(b) If found ,he refuses to pay the lawful charges of the finder;(c) If the goods are in the danger of perishing or of losing the greater part of their value(d) If the lawful charges of the finder, in respect of the goods found, amount to more than two thirds of their value (Section 169). (2 Marks)

Answer-2 (a) :

As per section 130 of the India Contract Act, 1872 a specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into. (2 Marks)

As per the above provisions, (i) Yes. Shashi is discharged from all the subsequent loans because it's a case of continuing guarantee. (ii) Shashi is liable for payment of Rs. 2,00,000 to Hiren because the transaction has already completed. (2 Marks)

Answer-2 (b) :

- (a) The given problem is based on section 200 of the Indian Contract Act, 1872 which deals with the provisions related to the ratification of unauthorized act cannot injure third person. Provisions says that an act done by one person on behalf of another, without such other person's authority, which if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person cannot, by ratification, be made to have such effect. According to the given situation, Aditya holds a lease from Birla which is terminable on three months' notice. C, an unauthorized person gives notice of termination of lease to Aditya. Accordingly the notice given by C (unauthorised person) if, ratified, would terminate Aditya's right or interest in the lease property. So such an unauthorised act of C, cannot be ratified by Birla, so as to binding on Aditya. (3 Marks)
- (b) According to the section 187 of the Indian Contract Act, 1872, an authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case. In the given instance, the shop of A was managed by B and the conduct of business as to the ordering of goods from C and transaction related to that was made from the A's fund and with A's knowledge. This reflects according to the above provision that B has an implied authority from A to order goods from C in the name of A for the purposes of the shop. (3 Marks)

Answer-3 (a) :

As per Section 2(13), Employee means any person other than an apprentice employed on a salary or wage not exceeding Rs. 10,000/- per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. From the above definition it is clear that an employee under the Act can be at managerial level, clerical level or workmen level. The criterion is the salary or wage limit of Rs. 10,000 per month. Employees who draw more than Rs. 10,000 per month do not fall within the definition of employee under this Act and hence are not eligible for bonus. **(2 Marks)**

1. Only criterion for deciding whether person is an employee or not is that salary should be less than Rs.10000/-. In this case, Rajesh although a peon will not be eligible as an employee. The reason being Salary being more than Rs.10000/- **(1 Mark)**
2. Act does not bifurcate Employee on the basis of position or type of work. Only criterion is Salary which should be less than Rs.10000/-. In this case, Ramu even though a MD in Private Limited Company would be considered as an employee. **(1 Mark)**
3. Even a workmen having salary more than the threshold limit i.e. Rs.10000/- will not be considered Employee as per the provision of The Payment of Bonus Act, 1965. **(1 Mark)**

Answer-3 (b) :

- (a) **Depreciation:** Any amount by way of depreciation admissible under Section 32(1) of the Income Tax Act or under the provisions of the agriculture income tax law. If however, any employer has been paying bonus to his employees under a settlement or an award or agreement made before the promulgation of the Bonus Ordinance, i.e., before 29 May, 1965, and subsisting on that date, after deducting from the "gross profit" notional normal depreciation, then, the amount of depreciation to be deducted as prior charge may continue to be such notional normal depreciation. This, however, is at the option of the employer who may choose either the normal depreciation or the depreciation admissible under the Bonus Act. This option has to be exercised only once and within one year from May 29, 1965. **(2 Marks)**
- (b) **Development Rebate or Allowance:** Any amount by way of development rebate, or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act. **(1 Mark)**
- (c) **Direct Taxes:** Subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year. **(1 Mark)**
- (d) **Return on Capital etc.:** Such further sums as are specified in respect of the employer in the Third Schedule. This schedule prescribes the categories of employer (company, banking company, corporations, cooperative society etc.) who are entitled for permissible deductions. **(2 Marks)**

Answer-4 (a) :

Under section 8 of the Payment of Bonus Act, 1965 an employee is entitled for bonus in an accounting year if he has worked in the establishment for not less than thirty working days in that year. Under section 2 (13) an employee is defined to include an employee drawing a salary of less than Rs. 10,000 per month. **(2 Marks)**

In the given case, Mr Eshan was an eligible employee within the meaning of the term under section 2 (13) but became ineligible to receive bonus as he worked in the accounting year only for 28 days and hence will not be entitled to receive bonus. **(2 Marks)**

Answer-4 (b) :

This statement is false because in terms of section 2 (b) clause (i) basic wages do not include the cash value of food concessions. Section 2(b) of the EPF&Misc Provisions Act, 1952 defines basic wages as all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include among other things the cash value of food concessions. **(2 Marks)**

While the non inclusion of cash value of food concessions in basic wages is included in the definition of basic wages, it may however, be pointed out that any subsidy or concession is a benefit of reducing the cost of a commodity to the employee and hence cannot be construed as having been paid in cash to him. Therefore, it is not part of basic wage even as per the specific definition (without even considering exceptions). **(2 Marks)**

Answer-5 (a) :

As per Section 2 (ff) , "Exempted employee" means an employee to whom a Scheme/ the insurance scheme as the case may be would, but for the exemption granted under Section 17, have applied. (2 Marks)

As per Section 2(fff) , "Exempted establishment" means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of any Scheme or the insurance scheme as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein. (2 Marks)

Answer-5 (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)

Thus from the above provisions, it can be concluded that Mr.Krishna is not liable to contribute higher amount. (1 Mark)