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SUBJECT-LAW

Test Code – CFN 9334

BRANCH - () (Date :)

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ANSWER 1:

(A)

According to section 33 of Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that :

- i. The power of expulsion must have existed in a contract between the partners;
- ii. The power has been exercised by a majority of the partners; and
- iii. It has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

In the given question, spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry on the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and C.

Thus, according to the test of good faith as required under Section 33, expulsion of Partner B is not valid.

(4 Marks)

(B)

(i) Duty of the buyer according to the doctrine of "Caveat Emptor": In case of sale of goods, the doctrine 'Caveat Emptor' means '**let the buyer beware**'. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

Duty of the seller according to the doctrine of "Caveat Emptor": The following exceptions to the Caveat Emptor are the duties of the seller:

1. Fitness as to quality or use
2. Goods purchased under patent or brand name
3. Goods sold by description
4. Goods of Merchantable Quality
5. Sale by sample
6. Goods by sample as well as description
7. Trade usage
8. Seller actively conceals a defect or is guilty of fraud

(ii) As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]

(6 Marks)

(C)

Sub – Partnership :

- (a) When a Partner of a Firm agrees to share his own share of profits with an outsider, it is called sub – partnership and such outsider is called a Sub-Partner.
- (b) A partner is free to make an agreement of sub – partnership, provided it does not affect the position of other Partners with reference to him.
- (c) A Sub - Partner –
- Is NOT connected with the Firm.
 - Has NO relationship with other Partners in the Firm.
 - Acquires NO rights to take part in or to interfere with Firm’s business or examine the Firm’s accounts.
 - CAN claim his agreed share from the Partner with whom he enters into sub – partnership.
 - Upon dissolution of Firm, he is in the same position as that of a Transferee of a Partner’s Share.

Partnership at will [Sec 7]:

A partnership is called a partnership at will –

- (a) when the duration of their Partnership is NOT fixed, and
- (b) when no provision is made as to whom and how the Partnership will come to an end.

Dissolution : It can be dissolved at any time by any of the Partners notifying his willingness to do so. If the duration or the terms of determination of Partnership can be implied, it cannot be a Partnership at will.

(6 Marks)

ANSWER 2:

(A)

As per section 16 of Sale of Goods Act, 1930, where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

In the given question, Ms Pooja goes to a beauty sale on. She asks for a facial and a hairdo. She does not disclose any allergies to the beautician. The beautician applied some hair dye without asking anything about the possible allergies. Ms Pooja developed dermatitis. Fitness of the dye to extends to that of a normal person. If a client has specific allergies, the client is bound to disclose the same. Therefore, the beautician is not liable.

(4 Marks)

(B)

According to section 37 of Indian Partnership Act, 1932, where any member of a firm has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of him self or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the given question, A is entitled to three – eighths of the partnership property and profits. A becomes bankrupt whereas B and C continue the business without paying out A's share of the partnership assets or setting accounts with his estate.

Therefore, A's official receiver is entitled to three – eighths of the profits made in the business, from the date of his bankruptcy until the final liquidation of the partnership affairs.

(6 Marks)

(C)

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 3:

(A)

Meaning :Dissolution refers to putting an end to the jural relationship between the Partners. It arises when it appears that the state of feelings and conduct of the Partners have been such that business cannot be continued with advantage to any one of the parties.

Types

Dissolution of Firm	Dissolution of Partnership
Dissolution of Partnership between all the Partners of a Firm is called dissolution of the Firm.[Sec.39]	There is severance of relationship between one Partner and others in the Firm. Any change in the relations of Partners is called Dissolution of Partnership.
All Partners go out, there is no more relationship between the persons as Partners.	One or more Partners go out or a new Partner may come in, while other Partners remain in the Firm.
Business of Firm is completely stopped, its assets are realized, liabilities paid off and surplus distributed among Partners according to their share in Firm's property.	Remaining Partners may continue the business of the Firm.
Dissolution of Firm necessarily involves dissolution of the Partnership.	Dissolution of Partnership need not necessarily culminate in dissolution of Firm.
There is no relationship between the persons after dissolution of Firm.	The Firm may be reconstituted after the outgoing of or admission of a Partner.
Example : A and B contract that the Firm shall be dissolved after completion of Project X. Upon completion, Firm is dissolved and there is no relationship between them.	Example : A, B and C are Partners. On death of B, A and C continue the business of the Firm. There is a reconstitution of Firm on B's death with A and C as Partners.

(6 Marks)

(B)

As per section 24 of Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer

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- (a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.
- (b) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time; or
- (c) He does something to the good which is equivalent to accepting the goods e.g.

The pledges or sells the goods.

In the given question, P brought a musical instrument from a musical shop on a condition that he will purchase it, if he likes that instrument. After a week he has informed the shop owner that he has agreed to purchase the musical instrument.

Therefore, the ownership is transferred when he has decided to purchase the instrument as his own.

(6 Marks)

(C)

As per provisions of Sale of Goods Act 1930, the term 'property in the goods' is defined as the legal ownership of the goods. Transfer of Ownership means transfer of risk, rights and Returns pertaining to the goods.

In the given question, A, already sold his 4 cows to Mr. B. So the calves of the cows also belong to Mr. B.

Therefore, Mr. B is not required to return calves to Mr. A.

(3 Marks)

(D)

Before attaining majority	Position on attaining majority
a) Liability is confined only to the extent of his share in profits and property of Firm.	a) Decision : Within 6 months of his attaining majority or his obtaining knowledge that he had been admitted to the benefits of the Firm, whichever date is later, the minor Partner has to decide whether he shall remain a Partner or leave the Firm.
b) He is neither personally liable nor is his private estate liable.	b) Notice : He shall give a public notice of his intention, i.e. whether opting to become or not becoming a partner.
c) He cannot be declared insolvent, but if the Firm is declared insolvent, his share in the Firm vests in the Official receiver or Official Assignee.	c) Deemed Partner : Where he fails to give notice, he becomes a Partner in the Firm on the expiry of such period.

(3 Marks)