

**MITKARY SIR'S CAPS ACADEMY****CA Foundation - Test Series - November 2020****Marks: 100****SUBJECT : BUSINESS LAW & BUSINESS CORRESPONDENCE AND REPORTING****Time : 3 hrs.****SUGGESTED ANSWER****Answer - 1**

- (a) As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

In the instant case, X, Y and Z jointly promised to pay ₹ 3,00,000. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount. X is entitled to receive ₹ 20,000 from Y's estate, and ₹ 1,40,000 from Z.

- (b) As per the facts given, Ravi Private Limited borrowed ₹ 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed the amount beyond the expressed limit prescribed in its memorandum. This act of the company can be said to be null and void.

In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

So is being the act void in nature, there being no existence of the contract between the Ravi Private Ltd. and Mudra Finance Ltd. Therefore, the company Ravi Private Ltd. is liable to pay this debt amount upto the limit prescribed in the memorandum.

Remedy available to the Mudra Finance Ltd.: The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, a company which deals with the other, is deemed to know about the powers of the company.

So, Mudra Finance Ltd. can claim for the amount within the expressed limit prescribed in its memorandum.

- (c) **Delivery of goods [section 2(2) of the Sale of Goods Act, 1930]:** Delivery means voluntary transfer of possession from one person to another. As a general rule, delivery of goods may be made by doing anything, which has the effect of putting the goods in the possession of the buyer, or any person authorized to hold them on his behalf.

Modes of delivery: Following are the modes of delivery for transfer of possession:

- (i) **Actual delivery:** When the goods are physically delivered to the buyer.
- (ii) **Constructive delivery:** When it is effected without any change in the custody or actual possession of the thing as in the case of delivery by attornment (acknowledgement) e.g., where a warehouseman holding the goods of A agrees to hold them on behalf of B, at A's request.

- (iii) **Symbolic delivery:** When there is a delivery of a thing in token of a transfer of something else, i.e., delivery of goods in the course of transit may be made by handing over documents of title to goods, like bill of lading or railway receipt or delivery orders or the key of a warehouse containing the goods is handed over to buyer.

Answer 2

- (a) The general rule is that an agreement made without consideration is void (Section 25 of the Indian Contract Act, 1872). However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made even without consideration, will be valid and enforceable.
1. **Natural Love and Affection:** Any written and registered agreement made on account of love and affection between the parties standing in near relationship to each other.
 2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor.
 3. **Promise to pay time barred debt:** A promise in writing signed by the person making it or by his authorized agent, made to pay a debt barred by limitation.
 4. **Agency:** According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.
 5. **Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states “nothing in this section shall affect the validity as between the donor and donee, of any gift actually made.” Thus, gifts do not require any consideration.
 6. **Bailment:** No consideration is required to effect the contract of bailment (Section 148).
 7. **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.
- (b) **Essential elements to incorporate LLP-** Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:
- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
 - (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
 - (iii) To have registered office in India to which all communications will be made and received;
 - (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
 - (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
 - (vi) To execute a partnership agreement between the partners *inter se* or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
 - (vii) LLP Name.

(c) (i) **Distinction between Wagering Agreement and Contract of Insurance**

	Basis	Wagering Agreement	Contracts of Insurance
1.	Meaning	It is a promise to pay money or money's worth on the happening or non happening of an uncertain event.	It is a contract to indemnify the loss.
2.	Consideration	There is no consideration between the two parties. There is just gambling for money.	The crux of insurance contract is the mutual consideration (premium and compensation amount).
3.	Insurable Interest	There is no property in case of wagering agreement. There is betting on other's life and properties.	Insured party has insurable interest in the life or property sought to be insured.
4.	Contract of Indemnity	Loser has to pay the fixed amount on the happening of uncertain event.	Except life insurance, the contract of insurance indemnifies the insured person against loss
5.	Enforceability	It is void and unenforceable agreement.	It is valid and enforceable
6.	Premium	No such logical calculations are required in case of wagering agreement.	Calculation of premium is based on scientific and actuarial calculation of risks.
7.	Public Welfare	They have been regarded as against the public welfare.	They are beneficial to the society.

OR

(ii) **Minor is liable to pay for the necessities supplied to him:** This statement is incorrect. The case of necessities supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act, 1872. A claim for necessities supplied to a minor is enforceable by law, only against minor's estate, if he possesses. But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.

Answer 3**(a) DISSOLUTION OF FIRM VS. DISSOLUTION OF PARTNER**

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

(b) Consequences of Non-Registration of a Partnership Firm [Section 69 of the Indian Partnership Act, 1932]: Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. **These disabilities briefly are as follows:**

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
 - (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
 - (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
 - (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.
- (c)** Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ₹ 1.25 lakh (i.e. ₹ 12.75 minus ₹ 11.50 = ₹ 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

Answer 4

- (a) 1. Express Contracts: A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words the promise is said to be express.

Example: A tells B on telephone that he offers to sell his house for ₹ 2 lacs and B in reply informs A that he accepts the offer, this is an express contract.

2. Implied Contracts: Implied contracts in contrast come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Example: Where a coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so, it is an implied contract and A must pay for the services of the coolie detailed by him.

Tacit Contracts: The word Tacit means silent. Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written.

A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM]. Another example of tacit contract is where a contract is assumed to have been entered when a sale is given effect to at the fall of hammer in an auction sale. It is not a separate form of contract but falls within the scope of implied contracts.

3. Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

Example: Obligation of finder of lost goods to return them to the true owner or liability of person to whom money is paid under mistake to repay it back cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

4. E-Contracts: When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. In electronic commerce, different parties/persons create networks which are linked to other networks through EDI - Electronic Data Inter change. This helps in doing business transactions using electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

- (b) 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.

The test of good faith as required under Section 33(1) includes three things:

- The expulsion must be in the interest of the partnership.
- The partner to be expelled is served with a notice.
- He is given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner Y is not valid.

Answer 5

- (a) **Position of Mr. D:** Mr. D sold some goods to Mr. E for ₹ 5,00,000 on 15 days credit. Mr. D delivered the goods. On due date Mr. E refused to pay for it. So, Mr. D is an unpaid seller as according to section 45(1) of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when the whole of the price has not been paid or tendered and the seller had an immediate right of action for the price.

Rights of Mr. D: As the goods have parted away from Mr. D, therefore, Mr. D cannot exercise the right against the goods, he can only exercise his rights against the buyer i.e. Mr. E which are as under:

(i) **Suit for price (Section 55)**

In the mentioned contract of sale, the price is payable after 15 days and Mr. E refuses to pay such price, Mr. D may sue Mr. E for the price.

- (ii) **Suit for damages for non-acceptance (Section 56):** Mr. D may sue Mr. E for damages for non-acceptance if Mr. E wrongfully neglects or refuses to accept and pay for the goods. As regards measure of damages, Section 73 of the Indian Contract Act, 1872 applies.

- (iii) **Suit for interest [Section 61]:** If there is no specific agreement between the Mr. D and Mr. E as to interest on the price of the goods from the date on which payment becomes due, Mr. D may charge interest on the price when it becomes due from such day as he may notify to Mr. E.

- (b) **One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]:** The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year)-
 - shall be eligible to incorporate a OPC;
 - shall be a nominee for the sole member of a OPC.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases. OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Answer 6

(a) **Definition of Fraud under Section 17: 'Fraud' means and includes** any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Mere silence will amount to fraud: This statement is incorrect as per the Indian Contract Act, 1872. A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties.

(b) **Conclusive evidence of partnership:** Existence of Mutual Agency which is the cardinal principle of partnership law is very much helpful in reaching a conclusion with respect to determination of existence of partnership. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

Circumstances when partnership is not considered between two or more parties:

Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

- (i) Parties have not retained any record of terms and conditions of partnership.
 - (ii) Partnership business has maintained no accounts of its own, which would be open to inspection by both parties
 - (iii) No account of the partnership was opened with any bank
 - (iv) No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.
- (c) The doctrine of Indoor Management has limitations of its own. That is to say, it is inapplicable to the following cases, namely:
- (i) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.
 - (ii) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
 - (iii) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction, but it cannot apply to forgery which must be regarded as nullity.

SECTION B: BUSINESS CORRESPONDENCE AND REPORTING

Suggested answers in a gist as per the Module and its Format.

Answer-7

- (1) Spirituality is nothing but living life sensibly, striking a balance with your material life, neglecting neither

Answer-7

- (2) Living sensibly, and perfectly in this world is important and this should be our immediate goal.

Answer-7

- (3) Grumbling, complaining and feeling disgusted are the three emotions that we must avoid.

Answer-7

- (4) People around us change when we channel light, we bring changes and completely we prevent destruction or we minimize it. Then systems change automatically. If we change, then people us also change and the world heals

Answer-7

- (b) **Note making-** Mention the proper headings, sub-headings and abbreviations. Answers in this may vary. Do include the summary if as asked.

Answer-8

(a) Cultural Barriers-Cultural barriers do occur if people across the borders and their language, style, food habits, ethnic dressing sense are not understood well. For example a person residing in the North will have different taste, language, food, festivals etc as compared to an individual residing in Maharashtra or Uttar Pradesh. For example Holi celebrated in Mathura the delicacies served, the offerings in the temple is different as compared to in Maharashtra.

Answer-8 (b) 8(b) (i) Option 2

8 (b) (ii) Option 3

8 (b) (iii) The teacher said that the sun rises in the East.

(c) Précis

Précis maintain the word limit with a proper title. (Words of the title are not counted) Approximate word limit should include between 65-68 words. **One- third** is the criteria for writing a Précis and it should be maintained.

Answer 9 (a) ATR- (1)ATR is known as the Action Taken Report which is compiled few days after the meeting, suggesting various recommendations or action initiated in the meeting.(2) The Action Taken Report must always be submitted after a gap of about five to seven days. This gives proper time for the actions to be taken and the matter is well highlighted or discussed within the time frame.

9(b) (i) Option 1

9(b) (ii) Option 3

9(b) (iii) I am vexed by your behaviour.

(c) Application letter:

- (1) Your address on the left. (Imaginary address will do).
- (2) Mention the senders (employers) address.
- (3) Mention the subject and date.
- (4) Mention the salutation.
- (5) Mention all your potential; qualities with education experience if you have . State in details about efficiency in the field of Chartered Accountancy , your good communication skills and managing potential well in the letter.
- (6) Make the application letter crisp and short.
- (7) State how you as the candidate can be beneficial to the company. Conclude on a positive note on a chance of being interviewed or meeting again.
- (8) Mention the complimentary close.

Answer- 10(a) Lateral communication: Communication that takes place between departments or people on the same level in an organization is called as Lateral communication. 2) It is also called as Horizontal communication. Examples- Marketing Manager of Advertising Department coordinates with the Finance Manager of Production Department. It creates a friendly atmosphere in the organization.

10(b) (i) arrives

10(b) (ii) Adjective clause-that are honest.

10 (b)(iii) The inspector was pleased by the recitation.

10(c) Newspaper report:

- (1) Mention a good headline for the report.
- (2) Put either an imaginary name or your name as the by-line.
- (3) Mention the place and the dateline.(date is not always mentioned).
- (4) As a reporter maintain the 4W's and 1H (Where, When, What Why and How) in the opening paragraph making it amicable.
- (5) State as a reporter the observation on youth with sedentary lifestyle, competition in studies, eating fast-food at irregular intervals, skipping normal meals, getting homesick staying in a hostel.
- (6) Indicate the consequences of it having an effect in the health.
- (7) Mention imaginary Psychiatrist, Doctors being interviewed, elaborate their views.
- (8) Indicate a study or a research of the past youth and the present decline in the health scenario among them.
- (9) State the positive steps taken by society, or an NGO helping the youth. So that an awareness is developed.
- (10) Mention latest smoking, drug addiction is also a cause for the deteriorating health in the youth.
- (11) As a reporter, one can mention a comparative study of national and international countries on how the conditions of youth exist.
- (12) Conclude your newspaper report with both pros and cons. Elaboration is required as per words.

Memorandum-

- (1) Mention the company's name.
- (2) Mention all the relevant details date, to, from, and with subject and reference.(See the question paper for to and from)
- (3) State the importance of work as per the policy of the company.
- (4) In the content mention the importance of work in the office.
- (5) In a courteous and stern tone end the memo

Answer-11(a) Formal and informal channel of communication:

- (1) Formal channel of communication is controlled by people in positions of authority in an organization. (2) Examples-All the reports, records, and other forms that supply working information to various other departments of an organization are included in the formal channel of communication.
- (1) Informal channel of communication is the casual, friendly, and an unofficial channel of communication. (2)Communication is done across various departments and people in an organization and is not controlled by people in higher authority.(2) Informal communication is also done with neighbours, members of a particular community, social gatherings, etc. It does not conform to any prescribed official rules or procedures like in the formal channel of communication.

11b (i) Option 3

11b (ii) Option 4

11b(iii) Eschew.

(c) There are five networks in communication they are as follows

- (1) Vertical network.
- (2) Circuit network
- (3) Chain network
- (4) Wheel and spoke network.
- (5) Star network