

MODEL ANSWERS

AS-2605

B.Com. (Hons.) (First Semester)

Examination, 2013

BUSINESS LEGISLATION

Note: Attempt five questions in all. Question No. One is compulsory carrying 20 marks. Remaining four questions carry 10 marks each.

1. Short answer type question. All compulsory.

2x10

(i) Briefly explain the terms 'Executed' and 'Executory' contract.

Answers :

Executed Contract :

Where a contract has been performed by both the parties , it is called as an executed contract.

Executory Contract :

A contract where both the parties have not yet performed their obligation , the contract is called executor contract.

(ii) Who are the persons of 'Unsound mind'?

Answers :

Persons of unsound minds are :

- (a) **Lunatics** :A lunatic is a person whose mental power has deranged due to some mental strain . He is not natural or born fool .
- (b) **Idiot**: An idiot is a person who is a natural fool or born fool . He is completely devoid of mental capacity. His insanity is permanent.
- (c) **Drunkards or intoxicate persons** : A drunkard is a person who is under the influence of drink or some drug. When he is drunk he is incapable of making any rational judgment.

(iii) Differentiate between Void and voidable contracts.

Answer:

Basis	Void Contract	Voidable Contract
Section	Void contract is defined under Sec. 2(g)	Sec. 2(j) defines a voidable contract
Enforceability	Not at all enforceable	Enforceable at the option of aggrieved party

(iv) Can silence be fraudulent? Comment. Defines

Answers :

Explanation to Sec. 17 makes it clear that mere silence as to the facts likely to affect the willingness of a person to enter in to a contract is not fraud unless the circumstances of the case are such that regards being had to them it is duty of the person keeping silence to speak, or unless silence is equivalent to speech.

- (a) ***Mere silence is not fraud** :.....
- (b) ***Silence is fraud if there is duty to speak**:.....
- (c) ***Silence is fraud if silence is equivalent to speech**.....

***Students are required to explain above points accordingly.**

(v) 'No consideration no contract'. Comment.

Answers:

It says that in absence of consideration there will be no contract . However, the law recognizes the following exceptions to the rule of considerations. The exceptions have been given in the **Sec 25** of The Indian Contract Act. In these cases agreements are enforceable even if these have been made without consideration.

- (a) **A Promise made out of natural love and affection(Sec.{25(10)}**
- (b) **A promise made to compensate for voluntary services. (Sec.{25(2)}**
- (c) **Written promise to pay a time barred debt. (Sec.{25(3)}**
- (d) **Gift, etc, actually made: Explanation Sec. 25**
- (e) **To create Agency (Sec.185}**
- (f)

(vi) Briefly explain doctrine of Caveat Emptor.

Answers: The doctrine of 'Caveat Emptor' i.e. the buyers beware means that the buyer while purchasing goods must act with proper vigilance. He should be careful to see that the goods purchased will serve its purpose well.

The seller is under no obligation to tell the defects of his article. If the buyer is not careful and he find later on that the goods do not serve its purpose, he can't hold the seller liable for it.

(vii) Discuss the Effect of 'Coercion'.

Answers :

When the agreement is made under coercion, the consent is not free. Hence it is voidable at the option of the party whose consent was not free.

(viii) Can a minor enter into a contract?

Answers :

According to **Sec. 11** of the Indian Contract Act, It is quite clear that the a contract could be made only by major person, hence a minor is not competent to enter into a contract. If any contract is made with a minor, it shall be void. Thus, being a minor, although might be a basis of incompetence for contract, it is certainly a matter of protection for his interests. Even morally, it is something good since the people of lower age don't possess enough capacity of understanding everything.

(ix) Name the parties involved in the contract of indemnity?

Answers :

Indemnifier (Promisor) and Indemnified(Promisee) are the parties involved in the Contact of indemnity.

(x) Explain the term 'Existing Goods' as per Contract of Sale of Goods Act.

Answers :

Existing goods are those goods which are owned and possessed by the seller at the time of the sale . only the existing goods can be sold.

2. Define the term "offer". Explain the legal rules regarding a valid offer.

Answers :

According to Indian Contract Act, 1872. Sec 2(a)

“ When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”

***Legal rules regarding valid offer:**

- (1) Offer may be expressed or implied:.....**
- (2) Offer may be specific or general:.....**
- (3) Offer must give rise to legal obligation:.....**
- (4) Term of an offer must be definite and certain:.....**
- (5) Offer must be distinguished from an invitation to offer:.....**
- (6) Offer must be distinguished from a mere declaration of intention:.....**
- (7) Offer must be communicated:.....**
- (8) Offer must be made with a view to obtaining the consent of the other party to do or to abstain from doing the act.....**
- (9) Offer should not impose an unnecessary obligation to communicate non acceptance:....**

***Students are required to give relevant explanation of the above mentioned points.**

3. Define the terms 'Consent' and 'Free Consent'. When consent is not said to be free? Explain.

Answers :

Sec. 13 defines the meaning of consent as follows:

“two or more persons are said to be consent when they agree upon the same thing in the same sense at the same time”

Sec. 14 describe the cases when consent is not free.

It lays down that consent is not free if it is caused by coercion, undue influence, fraud , misrepresentation etc. If the consent is not free the agreement is voidable at the option of the party whose consent was not free.

For the validity of the contract, the consent should be free and real . As per Sec.14 of the Indian Contract Act, consent is free when it is not caused by the:

- (i) *Coercion (Sec. 15)
- (ii) *Undue Influence(Sec16)
- (iii) *Fraud (Sec. 17)
- (iv) *Misrepresentation(Sec. 18) and
- (v) *Mistake(Sec. 20-22).....

***Students are required to explain in details above mentioned points .**

4. What do you understand by 'Capacity to Parties' to contract? Discuss the law regarding Minor's agreements.

Answers :

Competence of parties to contract has been laid down in Sec. 11of the Act, Sec. 11 of the Act states , “ Every person is competent to contract(a)Who is of age of majority (b)who is sound mind and (c)who is not disqualified from contracting by any law to which he is subject”

Thus, a contract is enforceable by law when it is entered into between the person who are major, of sound mind and not disqualified by any law in operation.

1. **Major Person:** According to Indian Majority Act, 1875, the 'minors' have been indirectly defined as, “ Everyone domiciled in India shall be deemed to have attained the age of his majority when he completes his age of eighteen years and not before”

But in the following cases, a minor attain majority at the age of 21 years:

- (i) When a guardian of a minor person or property has been appointed under the Guardian and Wards Act, 1890; or
- (ii) Where a minor's property is under the superintendence of a Courts of Wards

Minor's Competence to Agreements:

A minor enjoys peculiar position in relation to the agreements entered in to by or with him. The law protects the interest of a minor with regard to an agreement made by him. In fact, law protects a minor against his own inexperience and against improper and evil design of

those advanced in age and experience. It has been rightly observed that, “the law protects minor person, preserves their rights and estates, excuses their laches and assist them in their pleadings; the judges are their counselors, the juries are their servants and the law is their guardian” Moreover a minor can always plead his minority and can gain advantage on this ground.

2. **Person of Sound Mind**: Persons of ‘unsound’ mind, have been indirectly described in Sec.12 of the Indian Contract Act. According to it ” a person is said to be of sound mind for the purpose of making contract , if at the time when he makes it , if capable of understanding it and forming a rational judgment as to its effect upon his interests” Thus , soundness of mind of a person depends on his capacity of understanding the contract and on his ability to form a rational judgment as to its effect upon his own interests.

The persons of unsound mind are lunatics, Drunkards and idiots.

3. **Person declared incompetent by Law:**

The following persons are deemed to be disqualified to enter into a valid contract :

- (i) **Alien Enemies**: An alien is a person who is citizen of a foreign country and is not a subject of Republic of India. A contract with an alien enemy , i.e. an alien whose state is at war with India, is not enforceable at law during continuance of war. In case, a contract has been made before the war, the contract shall be dissolved or shall remain suspended during the period of war. Such contract may be permitted to be performed if they are not against the public policy.
- (ii) **Foreign Sovereign and Diplomatic Staff**: Foreign sovereign and the diplomatic staff enjoy some privileges and they can’t be sued in court unless a prior permission from the Central Government has been sought and such permission has been granted.
- (iii) **Convicts and Criminals**: A convict during the course of imprisonment, is rendered incapable of entering into a contract except under a special license called “Ticket of Leave”. Such a person is again capable of entering into lawful contracts when the period of his sentence is over.
- (iv) **Insolvents** :After a person is adjudged insolvent, it is only the official receiver or assignee who is entitled to deal with the property of the insolvent since the

property vests in the official receiver or the official assignee. An insolvent is deprived of his right to contract for his property.

- (v) **Corporations or Joint –Stock Companies** :A corporation formed and registered under the provision of Companies Act, its contractual capacity is limited by Memorandum of Association and Articles. Any contracts exceeding its expressed powers is ultra – vires and is invalid.
- (vi) **Other Persons**: Formerly the barristers and the practicing doctors (physician) and the married women were not capable of entering into contracts. But now, with the Married Women’s Right to Property Act, 1874, their incompetency to contract is over. Also, the barristers and doctors can contract for their services and fees.

5. What is the concept of ‘public policy’? Which agreements have been held by the court as opposed to ‘Public policy’?

Answer :

Public Policy means policy of law or the Government for the public good or welfare. Every government tries to maximize the welfare of its citizens. Therefore, it makes a policy to discourage or prohibit any thing which is against the welfare or interest of society. For example, trading with enemy, Selling of public offices, agreements restraining people from carrying on lawful trade etc are injurious to society. Hence they are considered as opposed to public policy and have been declared void.

Agreements which have been declared against public policy by the court are as follows:

1. Agreements for trading with enemy:

An agreement with an enemy is likely to benefit the enemy. It is this reason such contracts during war are either suspended or dissolved. If they are not likely to benefit the enemy, these may be suspended during the war and can be revived after the hostilities are over.

2. Agreement interfering with administration of justice: No one is allowed to interfere with administration of justice. These are of following types:

(a) **Agreements stifling prosecution** :Stifling implies abuse of law. The law does not permit a person to make money out of a crime. You shall not make a trade of a felony. It is based on noble doctrine that if a person has committed a crime, he must be tried by the Court of Law and if found guilty must be punished.

(b) **Maintenance & Champerty:**

Maintenance: It implies assisting or financing of suits by third parties having no legal interest, for its prosecution or defense.

Champerty: It implies a bargain by which one party is to assist the other in recovering property and is to share in the proceeds of the action. Thus maintenance and champerty are likely to encourage purposeless, mischievous and retaliatory litigation.

(c) **Agreements to vary period of limitations:** According to law of limitation an action for breach of a contract must be brought within three years from the date of its breach. Thus an agreements to make this period longer or shorter than three year will be void. However, in practice this law has not been applied strictly by law Courts in India.

(d) **Traffic in Public Offices:** It implies transfer of public offices for some consideration or inducing public officers to act for consideration in cash or kind. Such agreements are contrary to public policy as these are likely to encourage corruption or inefficiency among the officials. Hence such agreements are void.

(e) **Agreements Creating interest opposed to duty:** Duty must be done .therefore such agreements are also likely to increase corruption and inefficiency among the officials . hence such agreements are void.

(f) **Agreement restraining personal freedom:** Under Article 21 personal freedom has been guaranteed by our Constitution. The law will not allow an agreement which takes away the personal liberty of a person .

(g) **Agreements interfering with parental rights & duties:** Guardianship right should not be allowed to be sold away or transferred in public interest. Children's ward's interest should be properly protected. Accordingly law has vested this authority in the parents of children. *Father is the lawful guardian of his minor child. In the absence of father these right is transferred to the mother.*

(h) **Agreements interfering with the marital status** :Agreements interfering with the marital status or duties are immoral . Hence these have been declared void.

- (i) **Agreements of Marriage Brokage or Brokerage:** Every one has liberty to marry according to his free choice .this free choice should not be disturbed by monetary consideration or engaging paid brokers to procure matches.

6. Discuss the rights and duties of a finder of goods?

Answer:

Rights of the Finder of the Goods:

- (1) **Right of lien:** The finder of the goods has right of lien of the Indian contract Act lays down that the finder of the goods has no right to sue the owner for compensation for expenses voluntarily incurred by him to preserve the goods and to find out the owner. But he may retain the goods against the owner until he receives over the goods for expenses. **(Sec. 168).**
- (2) **Right to sue for Specific Reward:** Where the owner has offered a specific reward for the return of the goods lost, the finder may sue for such reward and may retain the goods until he receives it.
- (3) **Right to sell :** The finder of goods have right to sell the goods found, in the following circumstances:
- (i) When the finder can't find the true owner with reasonable diligence or
 - (ii) When the owner refuses to pay the lawful charges of the finder or When the good is likely to perish or loss its value
 - (iii) When the lawful charges of the finder are equal to two third or more of the value of the goods.

Duties of finder of Goods :

- (a) Taking care of goods
- (b) Not mixing up with the goods found, with his own goods
- (c) Returning the goods with the increase or profit
- (d) Making efforts to find out the real owner of the goods.
- (e) Returning such goods to the real owner.
- (f) Not making any undue use of the goods found

Finding the lost goods of someone, is just like the bailee's position, hence the finder has all those duties as are ordinarily of a Bailee.

7. What do you understand by the term 'Agency'? How an agency is created and terminated?

Answers :

The contract which creates relationship of principal and agent between two persons is known as agency and the legal relation established between these two is known as an agency agreement.

Creation of an Agency

An agency is created by the following methods:

- (1) **By Clear Contract(Express agreement)**: When, as per some written or oral contract, some one is appointed as an agent, it is known as the agency established by clear contract.
- (2) **By Implied Agreement**: sometimes by the conduct of the parties the agency is deemed to have been established.
- (3) **By Necessity or Need**: In some cases, the law confers agency upon a person to act as an agent of another person without waiting or requiring for the consent or authorization of that another person, due to emergency of certain extra ordinary circumstances. Such an agency is called agency by necessity.
- (4) **By Ratification(Confirmation)**:Ratification means confirmation of an act which has already been done. Some times, an act is done by a person on behalf of another person but without another person's knowledge and authority. The another person have two options in such a case. He may either accept or reject such already promised act. If he accept and confirm the act, he is said to have ratified it.
- (5) **By Estoppel**: When some one exhibits by his conduct or behavior, as if he is an agent, and if not opposition is made by the employer with regard to it., he shall be liable for the act done by such agent.

Conditions when Agency is terminated: Along with the termination of the relationship between the principal and the agent, the agency is also deemed to be have been terminated. In Sec. 20 of the Indian contract Act, such conditions have been described as :

Termination of Agency by Law

- (a) **On death of parties:** On death of either principal or agent, the agency shall be deemed to have been terminated.
- (b) **On becoming Insolvent:** If the principal having been declared as an insolvent, the agency shall deemed to have been terminated.
- (c) **On the expiry of period of contract:** If the agency have been taken for some specific period, the agency shall be supposed to have been terminated on expiry of such period.
- (d) **On becoming Insane:** On death or insanity of the principal or his agent contract is considered to have been terminated.
- (e) **On destruction of subject matter:** If the very existence of the thing for which the contract has been made is over, the agency contract shall be deemed to have been terminated.
- (f) **On completion of determined or proposed target:** If the task for which the contract have been made is over, the agency contract shall deemed to have been terminated.
- (g) **On Principal being declared as foreign enemy:** If there emerges some war between the two countries of the agent and the principal, they being foreign enemies and the contract is terminated.

Termination of Agency by Conduct of Parties

- (a) **By Mutual Agreement :** By mutual agreement by the principal and agent they may terminate the agency any time and under any conditions.
- (b) **Termination by Principal :** The principal may take back the right of his agent before the use of the rights, in expressed or implied form.
- (c) **Termination by Agent :** The agent can separate himself from agency, by intimating through notice to the principal within time.

8. Explain the rules relating to Delivery of goods under Sale of Goods act 1930.

Answers:

As per **Section 2 (2)** of the Sale of Goods Act, 1930, the voluntary transfer of possession from one person to another is 'delivery'.

According to Sec. 33 of the Sale of Goods Act, delivery of goods sold may be made by doing anything, which the parties agreed to be treated as delivery or which has the effect of putting the goods in the possession of buyer or any other person, authorized to hold the goods on his behalf.

Rules Relating to Delivery

The Sale of Goods Act, 1930 contain **Sec. 34 to 36** detailing the following rules regarding delivery:

- (1) **Effect of Partial Delivery** :Normally the goods are delivered in total quantity but some times the seller may give only a part of the goods to separate it from the remaining goods. If this is the case, the partial goods shall not affect the final delivery.
- (2) **When Buyers Asks the seller to Deliver The goods**: If there is no reference to the time of delivery in the contract of sale, the seller is bound to deliver whenever the buyer demands the goods.
- (3) **Other Provisions**: Some other provisions in Sec. 36 of the Sale of Goods Act, 1930 are as follows:
 - (a) **Mode of Delivery** :It is the liability of the seller to deliver the goods. This is based on the express or implied contract between the parties.
 - (b) **Place of Delivery**: If the place of delivery is mentioned in the contract, the delivery shall be at the same place. If, however it is not mentioned then the delivery shall be at the place where the goods is normally stored
 - (c) **Time of Delivery**: If there is no mention of the time of delivery, the seller should deliver the goods in reasonable time, failing which the buyer may reject the delivery and claim compensation.
 - (d) **When Goods are in Possession of Third Party**: If the goods are in the possession of third party, the delivery is considered to have been made the movement the party accepts that he has some goods which belongs now to the buyer.

(e) **Demand for Delivery and Present the Goods:** The goods should be demanded at proper time. Similarly, the delivery should be given in proper time , place and manner. If the delivery is improper it may not be considered as delivery and damages may be claimed.

(f) **Delivery Expenses:** The seller has to bear all the expenditure of the delivery in absence of any specific agreement regarding it.

(4) **Delivery of wrong Quantity:** If the quantity of goods delivered is different from the quantity in the contract of sale , the following provisions shall apply:

(a) **Less Delivery:** The buyer may refuse the total delivery or accept it in whatever quantity has actually been delivered. In the second case, the buyer will pay at the same rate as agreed upon.

(b) **Excess Delivery:** The buyer has three options, first reject the full delivery, second accept the goods as was agreed upon, and third accept the extra goods and pay the money at the rate agreed for the original quantity of goods.

(5) **Delivery In Installments:** When the delivery of goods is not made in one single lot, but in smaller quantities the following rules shall apply:

I) If the agreement does not permit such delivery, the buyer is not bound to accept the goods.

II) If the agreement provides for delivery as well as payment in installments, following are the provisions:

III) (a) The buyer may repudiate the contract if the delivery is defective. The buyer has to decide whether the breach is serious or not. Alternatively, he may claim damages also.

(c) If the buyer does not take delivery of some installments or delay the payment , the seller has the right to claim compensation or even to cancel the contract.

(6) **Delivery of The goods to Transporter:** Sometimes, the buyer himself does not take the delivery of goods, instead, he appoints some transporter. In this case, the provisions shall be as follows :

(a) If it is decided in the contract that the seller will send the goods to the buyer, and for that purpose, seller will send the goods to the transporter, authorized by the buyer it would be presumed to be a delivery to the buyer.

(b) If due to negligence of the seller in dispatching the goods, the goods gets damaged then the seller is liable for such damage.

- (c) If the goods is being transported by sea or some other risky way, then the seller should inform the buyer in advance so that he may get the goods insured. If not, the seller will be liable for damages.
- (d) If the seller has agreed to give the delivery at some other place at his own risk, he would be liable for the damages for goods in transit.

(7) Inspection of Goods by the Purchaser: If the buyer has been given an opportunity to inspect the goods and he accept it after proper scrutiny, then delivery will be taken to exist at the time when the buyer approves the goods as fit for supply.

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