

LAW MOCK TEST

ANSWER GUIDELINES

Note: These are not the final answers but guidelines to provisions to be followed for each question

Answer key:

Answer to Question no. 1:

- a) At the very outset it is important to mention following legal provisions of Indian Contract Act which are relevant.

Firstly, it is only when the offer is accepted it results in promise, before that parties are not bound to each other. As Section 2(b) provides "When the person to whom proposal is made signifies his assent thereto, proposal is said to be accepted and when proposal is accepted it becomes promise." Question arises when can a proposal is said to be accepted. Section 7 of Indian Contract Act provides that in order to convert a proposal into promise, the acceptance must be (1) Absolute and unconditional (2) be expressed in some usual manner unless proposal prescribes particular manner in which it is to be accepted. Then Section 8 of Act provide performance of conditions of proposal or acceptance of any consideration for reciprocal promise which may be offered with proposal is acceptance of proposal. Coming now to facts of case in hand on 12-12-2017. Deceased 'A' made proposal for Insurance with Insu. Corp. He had issued cheques of Rs. 30k and 20k, which was also encashed during his life time by Insu. Corp. By accepting premium by itself does not amount to acceptance so as to result in a binding promise.

In leading cases, supreme court of India held that in certain human relation, silence to proposal may amount to acceptance but in case of *contract of Insurance policy (contract of utmost good faith)*, *silence* or retention of premium by Corp. by itself *does not denote acceptance* of proposal.

Though in case in hand cheque of Rs. 30k and 20k were accepted by Corp. But was not credited in premium account of deceased, Divisional Manager who is Competent Authority to accept the insurance policy had also not accepted the proposal by signing on insurance paper, during life time of deceased, therefore there was no binding contract between parties and thus widow cannot claim Rs. 50,000/- from Insu. Corp.

- b) As per section 2(68), a company to be registered as a private company must restrict its membership to 200 only. However, in counting this number of 200 members, employee members and ex-employee members (i.e., those who become members while in the employment of the company but now having ceased to be in the employment still continue to retain membership) are to be excluded. Thus, in the

given case, the company shall continue to be a private company. There is no need for conversion.

- c) A buyer can treat the breach of a condition as a breach of warranty. "where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated." In the following cases, a contract is not avoided even on account of a breach of condition:
- i. Where the buyer altogether waives the performance of the condition, a party may, for his own benefit, waive a stipulation.
 - ii. Where the buyer elects to treat the breach of condition as one of a warranty. That is to say, he may only claim damages instead of repudiating the contract.
 - iii. Where the contract is non-severable and the buyer has accepted either the whole goods or any part thereof. Acceptance means acceptance as envisaged in Section 72.
 - iv. Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

Answer to Question no. 2

a) Meaning of unlawful consideration and object: – Two things are necessary for a contract to be a valid contract i.e., a valid object and a valid consideration. If they are not, hence it is Unlawful consideration. Therefore, the Indian Contract Act provides us with the parameters that make up such legitimate consideration and objects of contract.

Section 23 of the Indian Contract Act clearly states that the consideration or object of a contract is considered a valid consideration or object and if they are not, the object and consideration shall be deemed to be unlawful.

What consideration and object are unlawful?

The consideration and objects which are unlawful are as follows: –

- Specifically forbidden by law
- of such a nature that they would defeat the purpose of the law
- which are fraudulent
- defeats any rules in effect
- involve injury to any other person or property
- the courts regard them as immoral
- Opposed to public policy.

{Answer will be completed here itself with slight explanation of these points. Further explanation here is given for better understanding of this topic.}

Explanation:

- i. Forbidden by law**
 - a. When the object of the contract or the consideration is prohibited by law, those consideration or objects are not lawful anymore. They become illegal. And so any such contract can no longer be valid.
 - b. The unlawful consideration of the object includes acts that are specifically punishable by law. It also includes those which the appropriate authorities prohibit through rules and regulations. But if the rules made by such officers are not in conformity with the law, then these laws will not apply.
 - c. **For Example:** – ‘A’ get a license from the Forest Department to cut grass of a certain area. Department officials told him that he could not pass on such interest to any other person. But there is no such law in the Forest Act. So ‘A’ sold his interest to ‘B’ and the contract was deemed valid.
- ii. Consideration or Object Defeats the Provision of the Law**
 - a. This means that if the contract is trying to defeat the intent of the law. If the courts find that the real purpose of the parties to the agreement is to fail the provisions of the law, then the contract will set aside.
 - b. **For Example:** – ‘A’ and ‘B’ enter into an agreement, where ‘A’ is the debtor and ‘B’ will not accept any limitation. This is done, however, to defeat the intent of the Limitation Act, and therefore the courts may consider the contract void due to the unlawful object.
- iii. Fraudulent Consideration or Object**
 - a. A lawful consideration or object can never be fraudulent. Agreement with Unlawful fraudulent considerations or object is void by nature.
 - b. **For Example:** – ‘A’ decides to sell goods to ‘B’ and smuggled out of the country. This is a fraudulent transaction because it is void. If ‘A’ does not deliver goods on his promise, then ‘B’ cannot recover the money under the law.
- iv. Defeats any Rules in Effect**
 - a. If the consideration or the object is against any rules in effect for the time being in the country, then it will not be a lawful consideration or objects. And so the contract thus formed will not be valid.
- v. When they cause Injury to another Person or Property**
 - a. In legal terms, an injury means wrongful harm by one offender to another person. Therefore if the object or consideration of the contract damages another person or property, it would be unlawful consideration.
 - b. **For Example:** – The contract to publish a book that infringes another person’s copyright will be void. This is because the consideration here is unlawful and injures another person’s property, i.e., its copyright.
- vi. When Consideration is Immoral**
 - a. If an object or consideration is considered immoral by the court, then such object and consideration are immoral.
 - b. **For Example:** – ‘A’ lent money to ‘B’ to get divorced from her husband ‘C’. And there was an agreement between ‘A’ and ‘B’, that if ‘B’ get divorced then ‘A’ will

get married to 'B'. But the court ruled that 'A' cannot recover money from 'B' as the contract is void due to unlawful consideration.

vii. Consideration is opposed to Public Policy

- a. For the betterment of the community, we prohibit certain contracts in the name of public policy. But in this case, we do not use public policy in the broad sense. If that were the case, it would have motivated the individual's personal freedom to enter into contracts. Therefore, public policy is used in a limited scope for consideration and object of the law.
- b. **So, let's look at some agreements that are against public policy:** -
- **Trade with the Enemy:** - Entering into a contract with the person of a country with which India is at war is a void agreement. For example, a businessman who was contracting with a Pakistani citizen during the Kargil War.
 - **Stifling Prosecution:** - This is universal that the natural course of law and such contracts are void. For example, A agrees to sell land to B if he does not participate in criminal proceedings against him.
 - **Maintenance and Champerty:** - Maintenance agreement is when a person promises to maintain a suit in which he has no real interest. And when a person agrees to assist another party in litigation for damages or a portion of the proceeds, then the Champerty occurs.
 - An agreement for traffic in public offices
 - Agreement to create a monopoly
 - An agreement for brokerage marriage for the rewards
 - **Interference with the Courts:** - An agreement which is intended to induce any judicial or state officials to do corrupt work and interfere in legal proceedings.

b) An LLP may be wound up by the Tribunal in any of the following circumstances:

- If the LLP decides that it should be wound up by the Tribunal
- If for a period of more than six months, the number of partners of LLP is reduced below two,
- If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order
- If the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years
- If the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Answer to Question no. 3

- a) (i) A firm can be liable for the wrongful acts of a partner. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore is liable to the same extent as the partner.

OR

- (ii) 1. When the contract of a partnership contains a provision for expulsion under stated circumstances.
2. The power to expel is exercised in good faith by the majority of the partners
3. The expelled partner has been notice of the charges against him and has been given an opportunity to answer the charges.

- b) A person may, under certain circumstances, be liable for the debts of a firm although he is not a partner. If a person, by words spoken or written, or by conduct, represents himself or knowingly permits himself to be represented, to be a partner in a firm, he is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm. – Sec. 28.

To hold a person liable as a partner by holding out, it is necessary to establish the following:

- a. He represented himself, or knowingly permitted himself to be represented as partner.
 - b. Such representation occurred by words spoken or written or by conduct.
 - c. The other party on the faith of that representation gave credit to the firm.
 - d. A retired partner of the firm is liable to third parties by the principle of holding out if he allows using his name in connection with the firm.
- c) Section 27 of Indian Contract Act is relevant for the decision of case in hand which provide: "Any agreement which restrain any person from lawful exercise of profession, trade or business of any kind, is to that extent, void."
So any agreement which debar any person either partially or completely from practicing any profession, trade or business which otherwise is lawful, is to that extent void. When a person under contract of service makes an agreement that he will serve only his employer only for particular period is valid, though such agreement involving personal service is not specifically enforceable u/s 41 of Specific Relief Act, but is valid contract. But any contract which curtail the freedom to do lawful business,

trade or business, that agreement has been declared to be void by Indian Contract Act.

Coming now to case in hand, any agreement between A and B that B would not serve anywhere during his employment to A would have been valid, after the termination of contract of service A has not lawful authority over B to restrain him to practice as Dr. within radius of 3 km of his (A's) clinic therefore A's suit for damages is liable to be dismissed.

Answer to Question no. 4

- a) A true seller can sell and transfer ownership title to the buyer. An absolute owner of the goods can transfer absolutely to the buyer. Subject to provisions of this act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority (or) with the consent of the owner, the buyer acquires no better title to the goods than the seller had.
1. Sale by person not owner
 2. Sale by one of the joint owners
 3. Sale by a person in possession under a voidable contract
 4. Sale by one who has already sold the goods but continues in possession thereof
 5. Sale by buyer obtaining possession before the property in the goods has vested in him
 6. Effect of estoppels
 7. Sale by unpaid seller

Sale by person not the owner (Section 27): As a rule, a mercantile agent having an authority to sell goods grants a good title to the buyer. A mercantile agent can communicate a good title to the buyer although he sells goods without having any authority from the principal to do so, provided the following conditions are fulfilled:

- a. The mercantile agent should be in possession of the goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of the owner.
 - b. The buyer should act in good faith. He should presume that the mercantile agent has authority to sell goods.
- b) The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act, 1932. The section provides that subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The

authority of a partner to bind the firm conferred by this section is called his 'Implied Authority' [SubSection (1) of section 19].

Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership.

Hence, if the partnership is of a general commercial nature, he may buy goods on account of the partnership. Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:

- i. The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the goods.
- ii. In the second case also, the answer would be the same as above, i.e. the implied authority of the partner binds the firm. In both the cases, however, the firm ABC can take action against A, the partner but it has to pay the price of stationery to the supplier D.

Answer to Question no. 5

- a) Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Further Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied.

Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose. Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly. a. Where the bales have been selected with the consent of the buyer's representatives: In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract.

Thus, loss arising due to fire in case of 60 bales would be borne by Mr. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated.

b. Where the bales have not been selected with the consent of buyer's representatives. In this case, the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.

- b) After incorporation, the company in the eyes of law becomes a different person from the shareholders who have formed the company. The company has its own existence and as a result the shareholders cannot be held liable for the acts of the company even though they hold the entire share capital of the company. This recognition of the company as a separate legal entity and being liable for its own acts and liabilities is known as the "Corporate Veil". However, under certain exceptional circumstances the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

The Salomon Vs. Salomon and Co Ltd. laid down the foundation of the concept of corporate veil or independent corporate personality.

In the following circumstances, corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company.

- (i) To determine the character of the company i.e. to find out whether co-enemy or friend
- (ii) To protect revenue/tax:
- (iii) To avoid a legal obligation
- (iv) Formation of subsidiaries to act as agents
- (v) Company formed for fraud/improper conduct or to defeat law

Answer to Question no. 6

- a) Performance means the doing of that which is required by a contract. Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end. Performance of a contract is the most usual mode of its discharge.

It may be: —

Actual performance — Attempted performance or tender of performance.

Actual performance: When both the parties perform their promises, the contract is discharged. Performance should be complete, precise and according to the terms of the agreement. Most of the contracts are discharged by performance in this manner.

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Attempted performance or Tender of Performance: In certain situations, the promisor offers performance of his obligation under the contract at the proper time and place but the promisee refuses to accept the performance. This is called as “Tender” or “Attempted Performance”. Where a valid Tender is made and is not accepted by the promisee, the promisor shall not be responsible for non-performance and he does not lose his rights under the contract.

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:

- a. The expulsion must be in the interest of the partnership.
- b. The partner to be expelled is served with a notice.
- c. 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.

c) The meaning of the term ultra vires is simply “beyond (their) powers”. The legal phrase “ultra vires” is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited. It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. 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.

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorized to carry on. 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, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

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Therefore, the resolution passed by the Board of Director ABC Pvt. Limited for an ultra vires transaction is invalid. As a result of this, the transaction entered into the supply of fish with FSH Limited is not legal and is void.