

**EXAMINATION OF ARTICLE CLERKS**  
**PAPER V**  
**MODERN COMMERCIAL LAWS**  
**Wednesday, 24<sup>th</sup> April, 2024**  
**TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]**  
**TOTAL MARKS – 100**

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General Instructions:

- (1) Please answer all the questions to the point.
- (2) Answers should be reasoned and wherever possible supported by provisions of law and case law.

**SECTION – I**  
**THE INDIAN CONTRACT ACT, 1872**

1. Explain in Law the Doctrine of Unjust Enrichment and remedies to the Doctrine. **5 Marks**
2. Write short notes on any **three** of the following: **12 Marks**
  - i. Rights of Indemnity Holder when sued.
  - ii. Sub Agent.
  - iii. Alteration of Contract.
  - iv. Reciprocal Promises.
3. A is the absolute Owner of a Land at Rampur. However, the name of A is not yet mutated in Property Register Card as the Owner of the Land. A sells and conveys the Land in favour of B for valuable consideration of Rs.1 crore. On execution of Deed of Conveyance of Land by A in favour of B, B pays the entire consideration amount of Rs.1 crore to A. The name of B is now required to be mutated in the Property Register Card in respect of the Land as the owner of the Land. However, prior to that to perfect the title of B in respect of the Land, the name of A is required to be mutated in Property Register Card. Therefore, alongwith the Deed of Conveyance, A executes a Power of Attorney in favour of B appointing B as his agent to mutate the name of A in Property Register Card. A pursuant to this transaction dies. Is B entitled to use the Power of Attorney to enable him to mutate the name of A in Property Register Card ? Kindly advise B. Explain with reference to relevant provision of Indian Contract Act, 1872. **5 Marks**
4. Ornaments of Ram were stolen. The Police arrested the thief and found the stolen ornaments of Ram. Thereafter, the Ornaments were kept in police custody. The Ornaments were stolen from police custody. Ram made the Government responsible and as per him they had failed to keep the duty of reasonable care as Bailee and **3 Marks**

were liable to compensate him for the loss. Will the Government be liable to compensate and indemnify Ram as the Ornaments were lost through negligence of the Government or that of its servants ?

## SECTION – II

### THE INDIAN PARTNERSHIP ACT, 1932 The Limited Liability Partnership Act 2008

1. Discuss kinds of Partnership and types of Partners. **5 Marks**
2. Write short notes on any **three** of the following: **12 Marks**
  - i. Difference between Dissolution of Partnership Firm and Reconstitution of Partnership Firm.
  - ii. Whistle blowing.
  - iii. Winding up of LLP.
  - iv. Personal profits earned by Partners of Partnership Firm
3. Lock and Key LLP and one Mr. Suresh Shah formed a Partnership in the name and style of M/s. Night Owl Sleep Solutions. Accordingly a Partnership Deed was executed on 18<sup>th</sup> September 2020. Mr. Suresh Shah submitted the Partnership Deed before the Registrar of Firms, Mumbai for registration of Partnership Firm. The Registrar rejected the Application stating that LLP cannot be a Partner of a Firm. Was the Registrar right in refusing the Application of Mr. Suresh Shah? What advice would you give to Mr. Suresh Shah ? **3 Marks**
4. A, B, C and D were carrying on business in the firm name and style of M/s. Goodwill Lighthouse. The terms of Partnership between A, B, C and D were recorded in Partnership Deed dated 19<sup>th</sup> June 2015. On 6<sup>th</sup> May 2018, B, C and D addressed a Letter to A of their intention to retire from the Partnership and the relevant para of the Letter reads as follows:- **5 Marks**

“We hereby give you Notice of our intention to retire from the Partnership as required under the said Partnership Deed dated 19<sup>th</sup> June 2015 and we shall be deemed to have retired from the Partnership at the expiration of the period of 3 months from the date of receipt hereof by you. On retirement as aforesaid, the Partnership will stand dissolved which please note.”

A filed a Suit against B, C and D for a declaration that B, C and D have retired from the firm of M/s. Goodwill Lighthouse on 6<sup>th</sup> August 2018 and that on such retirement A is entitled to continue the business of Partnership firm either as a Sole Proprietor or in Partnership with others.

The contentions of A are (i) Clause 2 of the Partnership Deed records that the partnership shall continue unless dissolved or determined with mutual consent of all the Partners and (ii) Clause 19 of the Partnership Deed which records that death, retirement or insolvency of any Partner does not dissolve the Partnership, the same shall be continued by the remaining Partners.

The contentions of B, C and D are (i) on account of retirement of 3 out of 4 Partners, only 1 Partner is left and A cannot carry on Partnership business because there is no Partnership and therefore the Partnership stands dissolved and (ii) under Clause 20 of the Partnership Deed, on Dissolution of Partnership the business is required to be wound up.

Thus the following issues were framed:-

- (a) Whether B, C and D retired from the Partnership Firm from 6<sup>th</sup> August 2018 ?
- (b) Whether Partnership is dissolved on 6<sup>th</sup> August 2018 and business is wound up ?
- (c) Whether A is entitled to carry on Partnership business ?

How would you decide each of the issues?

### **SECTION – III THE NEGOTIABLE INSTRUMENTS ACT, 1881**

1. Write a short note on the Offences by Companies under Section 138 of the Act. **4 Marks**
2. Write short notes on any **three** of the following: **12 Marks**
  - i. Payment of Instrument on which alteration is not apparent.
  - ii. Presumptions as to negotiable instrument.
  - iii. Circumstances under which Notice of Dishonour is unnecessary.
  - iv. Inchoate stamped instrument.
3. Discuss the powers of the Court to direct Interim Compensation. **4 Marks**
4. A a minor needs Rs.50,000/- for payment of his Tuition Fees. A approaches B and requests him to lend Rs.50,000/-. B advances Rs.50,000/- to A. A signs a Promissory Note promising B to repay the loan amount of Rs.50,000/-. A on 1<sup>st</sup> January 2023 draws a cheque dated 3<sup>rd</sup> March 2023 in favour of B for Rs.50,000/- towards repayment of loan amount. On 1<sup>st</sup> February 2023, A attains the age of majority. On 3<sup>rd</sup> March, 2023, B presents the cheque to the Bank. The cheque is dishonoured on account of insufficient funds. B files a Suit against A under Section 138. Will B succeed in the matter ? **5 marks**

**SECTION – IV**  
**SALE OF GOODS ACT, 1930**

1. Discuss the following:- **8 Marks**
- i. Implied Undertaking as to Title etc.
  - ii. Implied condition as to quality or fitness and its exceptions.
2. Write short notes on any **three** of the following: **12 Marks**
- i. Specific performance.
  - ii. Sale by sample.
  - iii. Agreement to Sell at Valuation.
  - iv. Sale by person not the Owner.
3. On 17<sup>th</sup> September 2023, a Contract was entered into between A and B whereby A agreed to sell to B 10 kgs of `Pure Dundi Coal` at the total rate of Rs.10,000/-. A under the Contract promised to B to deliver `Pure Dundi Coal` by 1<sup>st</sup> October 2023. On the strength of the Contract entered into between A and B, B entered into Contracts with various Sub-Purchasers for sale of `Pure Dundi Coal`. Thereafter, A delivered to B 10 kg. coal on 5<sup>th</sup> October 2023 and against that B handed over a cheque of Rs.10,000/- to A. B immediately on receipt of `Pure Dundi Coal`, delivered some of the goods to Sub-Purchasers on the same day and kept the rest of the goods at his warehouse. On account of delay in delivering the coal by A to B, B did not examine the goods and delivered to Sub-Purchasers. On the next day, 6<sup>th</sup> October 2023, B received complaint from the Sub-Purchasers that the goods delivered to them by B are not `Pure Dundi Coal`. B immediately wrote to A and complained that the goods as per the Contract were not `Pure Dundi Coal` and stopped the cheque payment of Rs.10,000/- which was handed over to him against the delivery. A filed a Suit against B to recover the amount. B contested that since the goods were not as per the Contract description, he was entitled to reject the goods and was not liable to pay the price and also claimed damages from A. Will A succeed in this case? Give reasons for your answer. **5 Marks**
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