

FOUNDATION COURSE

MOCK TEST PAPER - 1

PAPER 2: SECTION A: BUSINESS LAWS

ANSWERS

1. (i) In terms of the provisions of Section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Referring to the above provision, we can analyse the situation as under.

The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfill his contract and is ancillary to the contract for the sale of the Motor Car.

Regarding the second situation given in the question, the agreement becomes void due to the destruction of the Motor car, which is the subject matter of the agreement here. Therefore, the security amount received by Mr. SUCH is required to be refunded back to Mr. JHUTH.

- (ii) **Doctrine of ultra vires:** 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.

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.

- (iii) **Essentials of Contract of Sale:** The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

- (i) There must be at least two parties
- (ii) The subject matter of the contract must necessarily be goods
- (iii) A price in money (not in kind) should be paid or promised.
- (iv) A transfer of property in goods from seller to the buyer must take place.
- (v) A contract of sale must be absolute or conditional [section 4(2)].
- (vi) All other essential elements of a valid contract must be present in the contract of sale.

2. (i) **Revocation or lapse of offer:** Section 6 of the Indian Contract Act, 1872 deals with various modes of revocation of offer. According to it, an offer is revoked-

(a) **By notice of revocation**

(b) **By lapse of time:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely. It was held in *Ramsgate Victoria Hotel Co Vs Montefiore*, that a person who applied for shares in June was not bound by an allotment made in November. This decision was also followed in *India Cooperative Navigation and Trading Co. Ltd. Vs Padamsey Premji*. However these decisions now will have no relevance in the context of allotment of shares since the Companies Act, 2013 has several provisions specifically covering these issues.

(c) **By non fulfillment of condition precedent:** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The offeror for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money. Failure to satisfy any condition will result in lapse of the proposal. As stated earlier 'condition precedent' to acceptance prevents an obligation from coming into existence until the condition is satisfied. Suppose where 'A' proposes to sell his house to be 'B' for ` 5 lakhs provided 'B' leases his land to 'A'. If 'B' refuses to lease the land, the offer of 'A' is revoked automatically.

(d) **By death or insanity:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

(e) **By counter offer**

(f) **By the non acceptance of the offer according to the prescribed or usual mode**

(g) **By subsequent illegality**

(ii) **Distinction between Limited Liability Partnership (LLP) and Limited Liability Company**

	Basis	LLP	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
5.	No. of members/ partners	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members.

			Members can be organizations, trusts, another business form or individuals.
6.	Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	Minimum number of directors/ designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

3. (i) Implied authority of partner as agent of the firm (Section 19):

Subject to the provisions of section 22, 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”

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

- (a) Submit a dispute relating to the business of the firm to arbitration;
- (b) Open a banking account on behalf of the firm in his own name;
- (c) Compromise or relinquish any claim or portion of a claim by the firm;
- (d) Withdraw a suit or proceedings filed on behalf of the firm;
- (e) Admit any liability in a suit or proceedings filed on behalf of the firm;
- (f) Acquire immovable property on behalf of the firm;
- (g) Transfer immovable property belonging to the firm; and
- (h) Enter into partnership on behalf of the firm.

- (ii) As per the provisions of Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he think fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception- If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

In the situation given in the question, both the fuel meter and the speed meter of the car were working perfectly, Mr. CHHOTU had the means of discovering the truth with ordinary diligence. Therefore, the contract is not voidable. Hence, Mr. CHHOTU cannot rescind the contract on the above ground.

- 4. (i) Caveat Emptor’** means “let the buyer beware”, i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or

if he depends upon his skill and judgment and makes a bad selection, he cannot blame any body excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

The rule of caveat emptor does not apply in the following cases:

- (i) *Fitness for buyer's purpose*: Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. [Section 16(1)].
 - (ii) *Sale under a patent or trade name*: In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose [Section 16(1)].
 - (iii) *Merchantable quality*: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. [Section 16(2)].
 - (iv) *Usage of trade*: An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. [Section 16(3)].
 - (v) *Consent by fraud*: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.
- (ii) According to Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:

1. The third party knows about the restrictions, and
2. The third party does not know that he is dealing with a partner in a firm.

Now referring to the case given in the question, M supplied furniture to A, who ultimately sold them to a third party and M was also ignorant about the agreement entered into by the partners about the change in their role. M also is not aware that he is dealing with a partner in a firm. Therefore, M on the basis of knowledge of implied authority of A, can recover money from the firm.

But in the second situation, if M was having knowledge about the agreement, he cannot recover money from the firm.

5. (i) As per the provisions of section 24 of the 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-
- (a) When the buyer 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 or 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. he pledges or sells the goods.

Referring to the above provisions, we can analyse the situation given in the question.

Since Mr. JOSHI, who had taken delivery of the Motor Car on sale or Return basis and pledged the Motor car to Mr. GAJESH, he has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor Car) passes to the Mr. JOSHI. Now in this situation, Ms. PREETI cannot claim back her Motor Car from Mr. GAJESH, but she can claim the price of the Motor Card from Mr. JOSHI only.

- (ii) Under section 7(2) the Registrar shall on the basis of documents and information filed for the formation of a company, shall register all the documents and information and issue a certificate that the company is incorporated in the prescribed form to the effect that the proposed company is incorporated under this Act. The company becomes a legal entity from the date mentioned in the certificate of incorporation and continues to be so till it is wound up.

Effects of registration of a company

Section 9 of the Companies Act, 2013 provides that, from the date of incorporation mentioned in the certificate of incorporation, such of the subscribers to the Memorandum and all other persons, as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued by the said name. Accordingly, when a company is registered and a certificate of incorporation is issued by the Registrar, three important consequences follow:

- (a) the company becomes a distinct legal entity. Its life commences from the date mentioned in the certificate of incorporation capable of entering into contracts in its own name, acquiring, holding and disposing of property of any nature whatsoever and capable of suing and being sued in its own name.
- (b) it acquires a life of perpetual existence by the doctrine of succession. The members may come and go, but it goes on forever, unless it is wound up.
- (c) Its property is not the property of the shareholders. The shareholders have a right to share in the profits of the company as and when declared either as dividend or as bonus shares. Likewise any liability of the company is not the liability of the individual shareholders.

- 6. (i) The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced (**Bolton v. Modden**). Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

OR

Compensation for loss or damage caused by breach of contract (Section 73)

When a contract has been broken, the party who suffers by such a 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 to be given for any remote and indirect loss or damage sustained by reason of the breach.

In view of above, the statement given in the question seems to be incorrect.

(ii) Settlement of partnership accounts (Section 48)

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the firm to third parties;
 - (b) in paying to each partner rateably what is due to him from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital; and
 - (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.
- (iii) As per section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members shall be unlimited.

Hence, the order of NCLT will be legal.

Precautions: Before making any order,—

- (a) the company shall be given a reasonable opportunity of being heard in the matter; and
- (b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

FOUNDATION COURSE

MOCK TEST PAPER - 1

PAPER 2: SECTION-B: BUSINESS CORRESPONDENCE AND REPORTING

ANSWERS

1. (a) (1) b
(2) d
(3) a
(4) c
(5) c
- (b) (i) Green house Gases and the effects (Heading)
- (1) Acc to Global Wrmng hts
a) Wrmng lpsd in 21st cntry
- (2) New Prbltc System of prdctng clmt
(a) Dvlpd by Univ of South Hampton
(b) Uses new statscl mthd, diff from tradtnl smltns
(c) Rlbl and eqvlnt to crnt mthds
(d) Finds crnt clmt anlgs
(e) Uses rfrnce mdl
(f) Dedcs future psblts
- (3) New Method
(a) Prdcts very high mean air temp, espclly on sea surfaces in 2018-22
(i) Cause
• Low prblty of intense cold events
• High prblty of heat events
(ii) Effect
• Incrd trpcl strm actvty
- (b) Much faster than a super comp
(i) Prdctns made in frctn of scnd based on algo

Key Used

- Glbl= global
- Wrmng= warming
- Hts=hiatus
- Lpsd=lapsed
- Cntry=century
- Prblstc=probalistic
- Prdctng=predicting
- Clmt=climate

- Temp=temperature
- Dvlpd=developed
- Univ= university
- Statscl=statistical
- Mthds=methods
- Tradtnl=traditional
- Smltns= simulations
- Rlbl=reliable
- EqvInt=equivalent
- Crnt=current
- Analgs=analogues
- Rfrnce=reference
- Mdls=models
- Dedcs=deduces
- Psblts=possibilities
- Espcly=especially
- Prdcts=Predicts
- Prblty=probability
- Incrsd=increased
- Trpcl=tropical
- Strm=storm
- Actvty=activity
- Comp=computer
- Prdctns=predeictions
- Frctn=fraction
- Scnd=second
- Algo=algorithm

(b) (ii) Summary

As per Global warming hiatus warming seem to have lapsed in this, but new method suggests hotter temperatures than expected. New probabilistic system developed by South Hampton University uses a method different from the traditional one that uses new statistical method that finds current climate analogues using reference models deducing future possibilities. The system is as reliable as the current system. It has predicted extremely high mean air temperature especially on the sea surfaces due to low probability of extreme cold events and high probability of high heat events causing increased tropical storm activity. It makes predictions in a fraction of a second and is much faster compared to a super computer.

2. (a) Communication is a process of exchanging information, ideas, thoughts, feelings and emotions through speech, signals, writing, or behavior. Communication is relevant in daily life as we experience it in all walks of life. While talking to friends, family and office colleagues, while passing on a piece of information, while starting a campaign or a protest march; at every step we want to

communicate a message. The audience differs and the purpose differs; yet communication happens.

- (b) (i) d
- (ii) c
- (iii) Studies should be given first priority.
- (iv) The doctor asked the patient to wait.

(c) **GST : At a glance**

A new development in the field of tax payment has come up with the advent of GST (Goods and sales tax). This collective tax, includes all the multiple taxes levied on products, however the preparation for its implementation is not too sound. The government has postponed the first filing of GST, giving tax payers enough time to understand the nuances. The e commerce portals too have been given some leniency as far as deduction of taxes from sellers is concerned.

3. (a) **Chain of Command:** The communication pattern that follows the chain of command from the senior to the junior is called the chain network. Communication starts at the top, like from a CEO, and works its way down to the different levels of employees. It involves a lot of organizational hierarchy.
- (b) (i) a
 - (ii) c
 - (iii) A cake can be made by us on a stove.
 - (iv) They informed that they had been living in Assam.

(c) **Letter**

Manager

Date:

Your Own Office supplies Ltd.

New Delhi

Manager

Name of client company

New Delhi

Dear Sir/Madam

Sub: Apology for delay in shipment of Order No. 12345

This with reference to the order placed by your organization for supply of stationary items (Order No. 12345) dated 12th Aug., 2018. I sincerely apologize for the delay in the shipment of the same. Due to heavy rains in Mumbai, our dispatch section at the head office (based in Mumbai) could not send any orders for 3 days due to thin staff attendance and slow movement of traffic around the area resulting in inadvertent delay in shipment.

Please accept my sincere apologies for the inconvenience caused. We are a trusted a name in office supplies and we have always delivered your orders in time. We hope that you will give us many more opportunities to deal with you. Looking forward to a long term business relationship.

Thanks for the cooperation.

Regards,

Manager, Office and food supplies ltd.

4. (a) **Barriers in communication:**

- Physical Barriers
- Cultural Barriers
- Language Barriers
- Technology Barriers
- Emotional Barriers

Technology Barriers: Being a technology driven world, all communication is dependent on good and extensive use of technology. However, there might arise technical issues, like server crash, overload of information etc. which lead to miscommunication or no communication at all.

Language Barriers: It's a cosmopolitan set up, where people of different nationalities move from their home to other countries for work. As a result, it is difficult to have a common language for communication. Hence, diversity gives rise to many languages and it acts as a barrier at times.

- (b) (i) a
(ii) The school authorities declared the results
(iii) The teacher praised the girl that she had been working hard.

(c) **Answer Hints for Article**

- Social media is a good way to connect with friends and relatives
- A convenient platform for sharing ideas, thoughts and opinions
- Facebook, twitter, instagram, whatsapp are useful when used in a healthy way.
- Getting addicted to them is very easy and effects one's productivity.
- With the advent of social media in our lives, every movement gets tracked and reported.
- Technology at its boom, is not safe always. One needs to use it judiciously for good causes.
- The social media shows a person's daily movements, tracks your trips; what you see on your FB pages is influenced by your past searches, which is probably not right.
- A good balance of technology and mind, with less interference of the social media is an appropriate approach.

Answer Hints for Report

- Mention a heading, name of the NGO
- Venue, Date
- The purpose of the workshop
- How many members came from the NGO; how did they go ahead with the workshop
- The audience and its reaction
- Pamphlets , information shared during the session.
- Motivational talks to encourage donations to make a difference in the lives of underprivileged
- Felicitations/Valedictory session by the Principal

5. (a) **Based on Communication channels, there are three kinds of categories:**

- Verbal: Verbal communication involves the use of words and language in delivering the intended message
- Non Verbal: Nonverbal communication is the process of communicating by sending and receiving wordless messages. These messages can aid verbal communication, convey thoughts and feelings contrary to the spoken words or express ideas and emotions on their own.
- Visual: Visual communication through visual aids such as signs, typography, drawing, graphic design, illustration, colour and other electronic resources usually reinforces written communication. Visuals like graphs, pie charts and other diagrammatic presentations convey clearly and concisely a great deal of information. They are an essential part of official presentations these days.

(b) (i) b

(ii) d

(iii) The children requested for no homework that day.

(c) **Minutes of the Meeting**

Date: 21st July, 2018

Meeting started at 11: 00 am.

Members in attendance : Head of Sales and Marketing, the Product Head, Product lead, three members of the Sales team

Mr. Raju Murthy, Head of Sales and Marketing informed the agenda of the meeting i.e. the sales decline in the product

Mr. Kishore Sandhu, Product Head expressed concern over the matter; discussed a few flaws noticed in the sales strategy.

Ms. Seema Thakur, Sales Head gave a detailed analysis of the figures observed in the last six months.

Her team including Mr. X, Mr. Y and Mr. Z elaborated on the market trends based on the usage of the particular product

All the participants agreed to the concern and come back with a detailed report.

Conclusion Stated: ATR to be submitted by 24th July, 2018 to the Head of Sales and Marketing.

Resume

Name: Manish Reddy

Phone: 040-123456

Email:-mreddy@gmail.com

Address: 123, Chennai Road, Chennai

Birthday: 1st January

CAREER OBJECTIVE: Seeking a challenging career with a progressive organization that provides an opportunity to utilize my sales and marketing skills & abilities in the FMCG sector.

PERSONAL SKILLS

Excellent persuasion skills

Highly sales driven

Ability to work independently or as part of a team

Proven leadership skills and ability to motivate

EDUCATION

B.com from Hindu College, Delhi University

PGDIM from Symbiosis University, Pune

ACHIEVEMENTS

- Awarded the 'Best Sales person' Award in the company
- Awarded a cash prize for two consecutive months for over achieving sales target.

PROFESSIONAL EXPERIENCE

XYZ Pvt Ltd, Chennai

Worked as a Junior Sales Executive

Responsible for daily sales with a predicted target

Experience: 5 years

Auromatic Brothers

Worked as Senior Sales Executive

Responsible for monthly sales target

Led a team of twenty members.

Experience: 5 years.

REFERENCES: Will be provided upon request.

DECLARATION: I solemnly declare that all the above information is correct to the best of my knowledge and belief.

Date: Place:

(Manish Reddy)