



BUSINESS LAW (CAF-3)

Past years questions and answers

On the insistence of my students I have endeavored to produce chapter-wise past years exam questions and their solutions of "Business Law - CAF03" paper of ICAP. I hope this will help my students.

I request for the comments of the students on this text so that it remains on the path of continuous improvement and up-gradation.

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CHAPTER NO. 1

INTRODUCTION TO LEGAL SYSTEM

March 2015: Q 1

What do you understand by delegated legislation? Give two advantages and disadvantages of such legislation. (05)

March 2020: Q 1

(b) What is a delegated legislation? State one disadvantage of a delegated legislation.

Answer

Delegated Legislation:

In Delegated Legislation, power is given to an Executive (a minister or public body to make subordinate or delegated legislation for specified purposes only.

Advantages of delegated legislation:

- **Time:**

Parliament does not have time to examine matters in detail

- **Expert opinion:**

Much of the content of delegated legislation is technical and is better worked out in consultation with professional, commercial or industrial groups outside Parliament.

- **Flexible:**

Delegated legislation is more flexible than an Act of Parliament. It is far simpler to amend a piece of delegated legislation than to amend an Act of Parliament.

Disadvantages of delegated legislation:

- The main criticism of delegated legislation is that it takes law making away from the democratically elected members. Power to make law is given to unelected civil servants and experts working under the supervision of a government minister.
- Because delegated legislation can be produced in large amounts, the volume of such law making becomes unmanageable and it is impossible to keep up-to-date.

March 2016: Q 1

Identify the basis of legal system and explain the main sources of law in Pakistan. (05)

Answer

Basis of legal system in Pakistan:

The legal system in Pakistan is based on the Constitution of Pakistan 1973 as well as Islamic law (Sharia).

Main sources of law in Pakistan:

Following are the main sources of law in Pakistan:

i. **Legislation:**

It is the law created by the Parliament of the country and other bodies to whom it has delegated authority

ii. **Precedent:**

Precedent is a judgment or decision of a superior Court which are binding on the subordinate Courts.

iii. **Custom:**

Certain customs, practices and beliefs are so vital and intrinsic part of a social and economic system that they are treated as if they were laws.

iv. **Agreement:**

Parties in their agreement stipulate terms for themselves which constitute law for the contracting parties.

September 2016: Q 1

Briefly describe the process of legislation in case of a money bill when: (5)

(a) National assembly is in session

(b) National assembly is not in session

Answer

(a) Legislation in case of a money bill when National Assembly is in session:

A money bill shall originate in the National Assembly and after it has been passed by the Assembly it shall, without being transmitted to the Senate, be presented to the President for assent.

(b) Legislation in case of a money bill when National assembly is not in session:

- When National Assembly is not in session and President deems necessary to take immediate action, he has the power to issue an Act.
- Such Act promulgated thus, shall have the same force and effect as an Act of the parliament.
- However, the Act shall stand repealed after 120 days if it is not presented or passed by the National assembly

March 2018: Q 1

(a) Briefly describe how delegated legislation takes place and also describe how control is exercised over delegated legislation. (04)

(b) What is the process of legislation in case of a money bill when National Assembly is in session? (02)

Answer

(a) Delegated legislation

In delegated legislation power is given to an executive (a minister or public body to make subordinate or delegated legislation) for specified purpose only. For example, local authorities are given statutory powers to make bye-laws which apply within a specific locality. Control over delegated legislation is exercised in following ways:

- Parliament exercises control over delegated legislation by restricting or defining power to make rules
- Rules made under delegated power to move legislation may be challenged in the courts on the grounds of being ultra vires.

(b) Legislation in case of a money bill when National assembly is in session

A money bill shall originate in the National Assembly and after it has been passed by the Assembly it shall, without being transmitted to the Senate, be presented to the President for assent.

September 2018: Q 1

Specify Pakistan's system of government and identify Senate's role in the legislation process. (05)

Answer

System of government:

Pakistan has a Federal Parliamentary System of government, with the President as the Head of State and Prime Minister as Head of Government. The Federal Legislature is a bicameral Majlis- e-Shoora (Parliament), composed of the President, National Assembly (Lower House) and Senate (Upper House).

Role of Senate:

The role of the Senate is to approve all statutes passed by the National Assembly with the exception of money bills.

September 2020: Q 2

Briefly describe how an Ordinance is promulgated in Pakistan and what is the effect of such Ordinance. (4)

Answer

Promulgation of an Ordinance in Pakistan:

In terms of the constitution, the President has power to promulgate Ordinances only if the Senate or National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action.

The Ordinance as promulgated by the President has the same force and effect as an Act of the Parliament.

However, within 120 days of its issuance, such Ordinance is required to be presented or passed by the National Assembly in case of money bill and by both the houses in case of all other bills, otherwise the Ordinance stands repealed.

CHAPTER NO. 2

INTRODUCTION TO THE LAW OF CONTRACT

September 2015: Q 3

(b) Murad offered his car to Sanum for Rs. 400,000. Sanum accepted the offer and enclosed a pay order of Rs. 150,000 with a promise to pay the balance in monthly instalments of Rs. 62,500 each.

Under the provisions of the Contract Act, 1872 explain whether it is a valid contract. (03)

Answer

(b) **Acceptance must be absolute:**

An acceptance should be unconditional assent by the offeree to all the terms of the offer. In this case, since the offer has been accepted with a variation it would be regarded as a qualified acceptance. Therefore, a contract between Murad and Sanum has not been formed. However, if Murad accepts the counter offer made by Sanum then it would be a binding contract.

March 2016: Q 3

(b) Bader, who is the owner of Mashoor Associates, sent one of his employees Aftab in search of his pet horse which had been missing for 5 days. Bader advertised a reward of Rs. 20,000 in a newspaper for anyone who finds his missing horse. Aftab, unaware of the newspaper advertisement, traced the horse. Subsequently, on knowing about the reward Aftab claimed it from Bader.

Under the provisions of the Contract Act, 1872 identify the type of offer which was made by Bader. Also state whether Aftab would be able to claim the amount of reward under the circumstances. (04)

Answer

Offer and acceptance:

It is the case of a general offer as it was made to the public. A contract is made with the person who having the knowledge of the offer comes forward and acts according to the conditions of the offer.

However, under the given circumstances, Aftab cannot claim the amount of reward from Bader as there was lack of communication of the offer and Aftab did not know about the reward when he found the missing horse. Aftab could have accepted the offer only when he knew about it because an offer accepted without its knowledge does not confer any legal rights on the acceptor.

September 2017: Q 3

(b) Under the provisions of the Contract Act, 1872:

(i) list the essentials of a valid acceptance. (04)

Answer

Under the Contract Act, 1872 essentials of a valid acceptance are as follows:

- acceptance must be absolute and unqualified;
- it must be communicated either in writing or by word of mouth or by performance of some act;
- acceptance must be in the prescribed mode/reasonable mode;
- the acceptance must be given within the time specified or within a reasonable time when no time is specified;

- mere silence is not acceptance. It cannot be in the form of a negative confirmation. The acceptor should expressly accept the offer;
- acceptance must be given only by that person to whom the offer has been made;
- the acceptor must be aware of the proposal at the time of acceptance of the proposal;
- the acceptance must be given before the offer lapses or is withdrawn.

September 2018: Q 4

(b) On 3 September 2018 Saleem offered, by a letter, to sell his laptop to Ghazi for Rs. 50,000. Ghazi received the letter on 5 September 2018. On 6 September 2018 Ghazi posted the letter of acceptance to Saleem. The letter reached Saleem on 8 September 2018. Saleem wrote a letter of revocation of his offer and posted it to Ghazi on 5 September 2018. The letter reached Ghazi on 7 September 2018.

Required:

Under the provisions of the Contract Act, 1872 briefly describe:

- When the communication of the offer and acceptance and the revocation of the offer was completed as against Saleem and Ghazi under the above circumstances. (2.5)
- Whether a binding contract was created between Saleem and Ghazi (2.5)

Answer

(b) Communication of offer, acceptance and revocation

- Communication of offer was completed on 5 September 2018 i.e. when it came to the knowledge of Ghazi.

Communication of acceptance was completed as against Saleem when the letter was posted i.e. on 6 September 2018 and as against Ghazi it was completed when the letter of acceptance reached Saleem i.e. on 8 September 2018.

The communication of revocation of offer was completed as against Saleem on 5 September 2018 i.e. when the letter of revocation was posted, and as against Ghazi on 7 September 2018, when the letter of revocation was received by him.

- Since Ghazi had posted his letter of acceptance on 6 September 2018 and revocation of offer was communicated to him on 7 September 2018, his acceptance was valid Saleem cannot revoke his offer after 6 September 2018, when the communication of acceptance was completed as against him. Therefore, a binding contract had been created between Saleem and Ghazi.

March 2019: Q 1

- Respond to the following scenarios, under the provisions of Contract Act, 1872:

(ii) Ahmed being interested in purchasing Adil's DHA property sent him this letter on 01 March 2019, "I have heard that you are selling your DHA property. I am very much interested in purchasing it. Will you please consider selling the same to me? What is the highest price you have been offered so far?" Adil replied, "The highest quote for the property till now is Rs. 35 million." Ahmed replied, "I agree to buy your DHA property for Rs. 36 million." Subsequently, Adil received an offer from Hamid quoting Rs. 38 million for the said property. What will be Adil's liability towards Ahmed if he wishes to make the sale to Hamid? (02)

Answer

- The first letter from Ahmed and Adil's response on it were merely 'asking for information' and 'providing information' respectively and not offer and acceptance.

The second letter from Ahmed sent as a reply to Adil was itself an offer and not the acceptance of an offer. Since this offer had not been accepted by Adil, there is no binding contract between the parties. Accordingly, there is no liability if Adil sells his bungalow to Hamid.

March 2020: Q 3

(c) Batool offered to sell her flat to Saqib for Rs. 4,200,000. Saqib accepted the offer and sent a cheque of Rs. 1,500,000 with a stipulation to pay the balance in 24 equal monthly instalments of Rs. 112,500 each. Explain whether it is a valid contract. (03)

Answer

(c) **Acceptance must be absolute:**

An acceptance should be unconditional assent by the offeree to all the terms of the offer. In this case, since the offer has been accepted with a variation it would be regarded as a qualified (conditional) acceptance. Therefore, a contract between Batool and Saqib has not been formed. However, if Batool accepts the counter offer made by Saqib then it would be a binding contract.

September 2020: Q 4 (a)

Under the provisions of the Contract Act, 1872 list the essentials of a valid acceptance.

(4)

Answer

Essentials of a valid acceptance:

Following are the essentials of a valid acceptance:

- i. acceptance must be absolute and unqualified;
- ii. it must be communicated either in writing or by word of mouth or by performance of some act;
- iii. acceptance must be in the prescribed mode/reasonable mode;
- iv. the acceptance must be given within the time specified or within a reasonable time when no time is specified;
- v. mere silence is not acceptance. It cannot be in the form of a negative confirmation. The acceptor should expressly accept the offer;
- vi. acceptance must be given only by that person to whom the offer has been made;
- vii. the acceptor must be aware of the proposal at the time of acceptance of the proposal;
- viii. the acceptance must be given before the offer lapses or is withdrawn.

CHAPTER NO. 3

CAPACITY OF PARTIES, LAWFUL OBJECT AND CONSIDERATION

September 2016: Q 3

(b) Mrs. Ikram was searching for a house for her family in city's posh locality. Her grandfather Nadeem had promised to pay her Rs. 1.0 million by way of a gift for the purchase of the house. After finalizing the deal with one of the estate brokers, Mrs. Ikram asked Nadeem to pay her Rs. 1.0 million as promised. Nadeem, however, refused to pay the amount. Mrs. Ikram filed a suit against her grandfather Nadeem for the enforcement of the promise made by him.

Under the provisions of the Contract Act, 1872 advise under what circumstances Mrs. Ikram would be able to recover the amount from Nadeem. (04)

Answer

(b) Completed gift/love and affection:

An agreement made without consideration is void. However, Mrs. Ikram may claim the amount of Rs. 1.0 million from her grandfather Nadeem, by proving either of the following two conditions.

- i. Gift
- ii. love and affection

Completed gift:

In case of a gift it needs to be completed. The rule 'No consideration no contract' does not apply to completed gifts.

Love and affection:

An agreement made on account of natural love and affection without consideration will be valid if it is:

- expressed in writing,
- registered under the law,
- made on account of natural love and affection, and
- between parties standing in a near relation to each other.

However, in the given scenario, Nadeem only made a promise to pay Rs. 1.0 million by way of a gift and did not actually pay the amount. Similarly, the promise was not made in writing and was not registered, therefore, the promise cannot be enforced in both of the above circumstances and Mrs. Ikram cannot recover anything from her grandfather Nadeem.

March 2017: Q 2

(a) Under the provisions of the Contract Act, 1872 'Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.'

Describe the circumstances in which a person may not be able to enter into a contract, despite meeting the above conditions. (04)

Answer

(a) Disqualified persons:

Following persons are disqualified from entering into the contract though they are major and of sound mind:

- i. Alien enemies

If a war is declared with the enemy country, then alien enemy of Pakistan can neither enter into a contract or be sued during the period of war.

ii. **Foreign sovereigns and ambassadors**

As such persons have immunity. They have a right to enter into a contract but can claim the privilege of not being sued.

iii. **Convicts**

A convict while under imprisonment is incapable of contracting.

iv. **Insolvent**

A person declared as insolvent cannot enter into contract as his property is dealt with by official assignee or official receiver.

v. **Companies**

A company is an artificial person and a contract entered into by a company is invalid if it is not within the powers granted by the Memorandum of Association.

September 2019: Q 3

Respond to the following scenarios, under the provisions of the Contract Act, 1872:

(a) Shoaib, aged 15, is the son of a billionaire businessman, Ijaz Munsif. Last month Shoaib drove his father's 2018 Model BMW to a vintage car exhibition arranged by Volkswagen Club of Pakistan. At the exhibition he saw a vintage Mercedes-Benz and entered into a contract with the seller for the purchase of the car.

The seller, knowing Ijaz Munsif's status, delivered the car to Shoaib at his house. The seller requested for payment for the car but Shoaib refused to pay. The seller is now requesting for full payment by Ijaz Munsif. Discuss whether the seller would succeed in recovering the payment from Shoaib or Ijaz Munsif. (05)

Answer

(a) **Position of agreement by a minor**

Shoaib, being a minor, lacks the capacity to enter into a legally binding contract with the seller. Therefore, Shoaib is not bound by the contract and the contract is void ab-initio.

A minor can only be bound by a contract, if he has been supplied with necessities suited to his condition in life. His liability in such a case would be limited to the extent of his property, if any.

In this case, the vintage car cannot be regarded as a necessary good. Therefore, the seller cannot enforce payment for the vintage car against Shoaib.

The seller can only claim for the return of his car through an order of restitution.

Similarly, Ijaz Munsif cannot be held liable for the price of the car which his son Shoaib bought. He would have been held liable if his son had either entered into a contract jointly with him or the contract was for the supply of necessities to Shoaib.

March 2020: Q 3

(b) Muneer wanted to complete his bachelor's degree from Europe. His paternal uncle Furqan Butt had promised him to pay Rs. 2 million by way of a gift, at the time of his admission to a college in Europe. After getting admission to one of the renowned colleges in Europe, Muneer asked Furqan Butt to pay him Rs. 2 million as promised. However, Furqan Butt refused to pay the amount and Muneer filed a suit against Furqan Butt for the enforcement of his promise. Discuss the circumstances in which Muneer may be able to recover the amount from Furqan Butt. (04)

Answer

(b) Completed gift/love and affection:

An agreement made without consideration is void. However, Muneer may claim the amount of Rs. 2.0 million from his parental uncle Furqan Butt, by proving either of the following two conditions.

- iii. Gift
- iv. Love and affection

Completed gift:

In case of a gift it needs to be completed. The rule 'No consideration no contract' does not apply to completed gifts.

Love and affection:

An agreement made on account of natural love and affection without consideration will be valid if it is:

- expressed in writing,
- registered under the law,
- made on account of natural love and affection, and
- between parties standing in a near relation to each other.

However, in the given scenario, Furqan Butt only made a promise to pay Rs. 2.0 million by way of a gift and did not actually pay the amount. Similarly, the promise was not made in writing and was not registered, therefore, the promise cannot be enforced in both of the above circumstances and Muneer cannot recover anything from his parental uncle Furqan Butt.

CHAPTER NO. 4

FREE CONSENT AND VOID AGREEMENTS

September 2014: Q 3

(a) Two wrestlers Goga and Sheeda agreed to play a wrestling match on the condition that if any of them would fail to appear for the match, he would have to pay Rs. 5,000 to the other party. The winner was to receive Rs. 20,000 out of the sale proceeds of the tickets. Goga failed to appear in the match and Sheeda sued him for Rs. 5,000. Goga however, refused to pay claiming that being wagering in nature, the contract is not enforceable by law.

Under the provisions of the Contract Act, 1872 describe whether Sheeda can recover the amount from Goga. (03)

Answer

(a) Wagering Agreements:

All agreements knowingly made to further or assist the entering into, effecting or carrying out, or to secure or guarantee the performance, of any agreement void being in nature of wager, are void.

But in this case, Goga and Sheeda were not going to win or lose in terms of money as a result of wrestling match (i.e. uncertain event). The winning amount had not to be given out of their pockets, but had to be paid from the gate money which was provided by the public. As for the condition of payment for non-appearance, no uncertain event provided the equal chances of winning or losing.

Therefore, Sheeda is entitled to recover the amount from Goga as the agreement between Goga and Sheeda is not a wagering agreement and therefore, it is enforceable at law.

September 2014: Q 2

Under the provisions of the Contract Act, 1872 describe the following:

(a) Undue influence (06)

(b) Fraud (06)

Answer

(a) Undue Influence:

- i. A contract is said to be induced by "undue influence" where the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other.
- ii. In particular, and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another.
 - a. Where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
 - b. Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental distress or bodily distress.

(b) Fraud:

"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 intent to deceive another party thereto or his agent, or to induce to enter into the contract.

- i. The suggestion, as a fact of that which is not true, by one who does not believe it to be true;
- ii. The active concealment of a fact by one having knowledge or belief of the fact;
- iii. A promise made without any intention of performing it;
- iv. Any other act fitted to deceive;
- v. Any such act or omission as the law specially declares to be fraudulent.

Explanation:

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is in itself, equivalent to speech.

March 2016: Q 2

(a) Shafiq bought Abad's motorcycle factory in Faisalabad on Abad's representation that fifty thousand motorcycles are assembled at his factory annually. Shafiq later found that the factory has a capacity to manufacture thirty-five thousand motorcycles only per annum. Shafiq now wants to rescind the contract on the ground that his consent was obtained by misrepresentation.

Under the provisions of the Contract Act, 1872 list the circumstances under which Shafiq may not be able to rescind the contract. (05)

Answer

(a) Shafiq may not be able to rescind the contract under the following circumstances:

- If Shafiq had the means of discovering the truth with ordinary diligence; or
- Abad's misrepresentation was not the basis for Shafiq's consent; or
- After becoming aware of the misrepresentation Shafiq may have taken benefit under the contract; or
- If an innocent third party had acquired for consideration and in good faith some interest in the property; or
- Shafiq and Abad cannot be restored to their original positions.

September 2016: Q 2

(b) Until recently Mansoor and Arif were independently engaged in the business of selling sweets at Multan railway station. Mansoor incurred a loss due to competition. Arif, in view of his friendship with Mansoor, agreed to move his business to the old city area. They reached an agreement that Arif would not engage in any competing business with Mansoor. It was also agreed that in case of a breach, none of them would have recourse to a court of law for the enforcement of their rights.

Subsequently, due to economic downturn, Arif in addition to the old city area has also started to sell sweets at Multan railway station. Mansoor, in order to restrain Arif from selling sweets has filed a suit against him.

Under the provisions of the Contract Act, 1872 analyse the above situation and explain the following:

- i. whether Arif is justified in starting sweets business at Multan railway station. (02)
- ii. what would be your answer in (i) above, if Mansoor had bought the goodwill of Arif's business. (03)
- iii. whether Mansoor is justified in filing a suit in the court of law. (02)

- iv. what would be your answer in (iii) above, if both Arif and Mansoor or had agreed to refer their disputes to arbitration and not to the court of law. (02)

Answer

i. **Agreement in restraint of trade:**

Yes, Arif is justified in starting a sweets business at Multan railway station. As any agreement by which anyone is restricted from exercising a lawful profession, trade or business of any kind, is void to that extent.

ii. **Exception:**

Arif in this case would not be justified to start similar business at Multan railway station. An agreement which restrains the seller of a goodwill from carrying on a business is valid if all the following conditions are fulfilled:

- Such restriction must relate to a similar business.
- Such restriction must be within specified local limits.
- Such restriction must be for the time so long as the buyer or any person deriving title to the goodwill from him carries on a like business in the specified local limits.
- Such specified local limits must be reasonable to the Court having regard to the nature of the business.

iii. **Agreement in restraint of legal proceedings:**

Yes, Mansoor is justified in filing a suit against Arif. Every agreement, by which any party is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, is void to that extent.

iv. **Exception:**

An agreement between Arif and Mansoor to refer to arbitration any dispute which may arise between them is not void. However, if Mansoor or Arif are not satisfied with the arbitration award, they cannot be restricted to go to the court of law. This right cannot be excluded by the agreement.

March 2017: Q2

(b) Jamal threatened Rafia to murder her son Atif if she did not sell her house to Mujahid. Rafia did as she was told.

Under the provisions of the Contract Act, 1872 comment on the validity of the above contract. (02)

Answer

(b) **Coercion:**

The contract in the above situation is voidable at the option of Rafia as her consent is not free and has been obtained by coercion.

September 2017: Q 3

(a) Ghaffar purchased a piece of land from Sharif who is an engineer by profession. During the discussion prior to the purchase, Sharif had told Ghaffar that in his opinion, the land would be able to support 2,500 mango trees. However, only 2300 trees could eventually be planted on the land.

Under the provisions of the Contract Act, 1872 discuss whether Ghaffar can claim damages on the grounds of fraud. (03)

Answer

(a) Fraud:

Sharif's statement that in his opinion the land could support 2,500 mango trees clearly indicated that he was not sure about it and was just giving an opinion. Therefore, unless Ghaffar can show that the statement was made with the intention to deceive him, he cannot claim damages on the grounds of fraud.

September 2018: Q4

(c) On 1 July 2018 Basit agreed to buy 500 grams of silver from Taimur after two months at a price of Rs. 65 per gram. On the due date the price of silver was Rs. 62 per gram.

Under the provisions of the Contract Act, 1872 discuss the validity of the above contract if both Basit and Taimur had an intention to settle the transaction by paying the difference between the contract price and the market price without making any delivery. (02)

Answer

(c) Wagering agreement

The contract being wagering in nature, is not a valid contract. As both Basit and Taimur had no intention of giving or taking delivery of goods (subject matter) and were only interested in earning profit by way of fluctuation in silver prices.

September 2018: Q2

(a) Mughal and Dawood are trading in rice. Dawood entered into a contract with Mughal for the purchase of 50 tons of rice. Dawood had private information of change in prices which would have affected Mughal's willingness to enter into the contract. When Mughal, through his own resources, came to know about the prices, he accused Dawood of fraud and repudiated the contract. Under the provisions of the Contract Act, 1872 explain whether Mughal is justified in repudiating the contract. (04)

Answer

(a) Fraud:

No, Mughal is not justified in repudiating the contract. Dawood is not bound to disclose the information to Mughal as the relationship existing between them is not that of 'utmost good faith' (i.e. fiduciary relationship). Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless there is a duty to disclose such fact or where silence is equivalent to speech.

September 2019: Q 3

Respond to the following scenarios, under the provisions of the Contract Act, 1872:

(b) Haroon was engaged to be married to Ghazala. Haroon wanted to establish his own business and therefore he entered into a contract with Ghazala for providing him all her jewellery and apartment by way of a gift and in return Haroon agreed to give her a small share in business profit. After some time, Ghazala filed a suit against Haroon, requesting for setting aside the gift deed as it was not made with her free will. Discuss whether Ghazala would succeed in her contention. (04)

(c) Sultan bought electronic appliances worth Rs. 700,000 from Zameer on thirty days' credit. At the time of purchase, Sultan knew that he was in insolvent circumstances. Discuss the validity of the contract. (03)

Answer

(b) Undue influence

Ghazala may succeed to recover her jewellery and apartment from Haroon on the presumption of undue influence.

A contract is said to be induced by undue influence where the relation subsisting between the parties is such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other.

Haroon in this case is a fiancé of Ghazala and is in a position to dominate her will.

When the consent to an agreement is caused by undue influence, the agreement is voidable at the option of the party whose consent is so caused. Therefore, the contract is voidable at the option of Ghazala.

The Court may set aside the contract either absolutely or, in case if Ghazala has received any benefit under the contract, upon such terms and conditions as the Court may seem just.

The burden of prove that the above contract, which on the face of it appears to be unconscionable, was not induced by undue influence lies on Haroon, as he is the one who is in a position to dominate Ghazala's will.

(c) Fraud - empty promise

A promise made without any intention of performing it tantamount to fraud. Therefore, in this case since sultan had no intention of performing the contract, he committed a fraud and the contract voidable at the option of Zameer.

March 2020: Q 2

(b) Naeem was a treasury manager in Raheel Associates (RA). Naeem robbed Rs. 100,000 cash from the business. Raheel, the owner of the business, instituted legal proceedings against Naeem. Naeem agreed to return the cash and Raheel agreed to withdraw the proceedings against him. Naeem fulfilled his part of the promise

Under the provisions of the Contract Act, 1872 explain whether Raheel is bound to withdraw the proceedings against Naeem. (02)

Answer

(b) The agreement between Naeem and Raheel is void as its object is unlawful. Raheel, therefore, is not bound to fulfil his part of the promise.

September 2020: Q 3 (a)

Under the provisions of the Contract Act, 1872 list any **three** circumstances in which a party whose consent was obtained by misrepresentation cannot rescind the contract. (3)

Answer

Exceptions to rescind the contract under misrepresentation:

A party cannot rescind the contract where:

1. the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence.
2. the party gave the consent in ignorance of misrepresentation.
3. the party after becoming aware of the misrepresentation takes a benefit under the contract.

CHAPTER NO. 5

PERFORMANCE OF A CONTRACT

March 2015: Q2

(b) In accordance with the contract entered into by Masoom and Mubarak, Masoom has offered to deliver 300 Rolex watches to Mubarak on 1 March 2015. Under the provisions of the Contract Act, 1872 advise Masoom about the conditions which must be satisfied for constituting a valid offer of performance. (03)

Answer

(b) Condition of Valid Offer of performance - Tender

In order to constitute a valid offer, Masoom must fulfil the following conditions:

The offer must be unconditional;

It must be made at a proper time and place, and under such circumstance that Mubarak may have a reasonable opportunity of ascertaining that Masoom is able and willing there and then to deliver 300 Rolex watches;

Mubarak (the promisee) must have a reasonable opportunity of satisfying himself that the watches offered are the Rolex watches and are 300 in numbers which Masoom (the promiser) was bound by his promise to deliver.

March 2017: Q3

Faheem, Saleem and Jameel jointly borrowed Rs. 50 million for a business project from a common friend Kamal. They jointly promised to repay the borrowed amount. Under the provisions of the Contract Act, 1872 comment on the following:

(a) In the absence of express agreement, what would be the rights and liabilities of joint promisors. Also explain their rights and liabilities if Kamal releases Jameel from the joint liability. (06)

(b) how the liability would devolve in case of death of one or more of the joint promisors. (02)

Answer

(a) Any one of Joint promisors may be compelled to perform in absence of express agreement to the contrary, Faheem, Saleem and Jameel are jointly liable to fulfil the promise.

However, Kamal, may compel anyone (Faheem/Saleem/Jameel) or more of them to perform whole of the promise.

Each joint promisor (Faheem/Saleem/Jameel) may compel every other joint promisor to contribute equally with himself to the performance of the promise.

If anyone of joint promisor (Faheem/Saleem/Jameel) or more of them makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal share.

Effect of release of one joint promisor:

If Kamal releases Jameel, it will not discharge the other joint promisors Faheem and Saleem; neither would it free Jameel from responsibility to Faheem and Saleem.

(b) Devolution of Joint Liabilities

In case of death of one or more of joint promisors, the liability would devolve as follows:

to representatives of the deceased promisor jointly with the surviving promisor(s) in case of death of any of the joint promisors; and

to representatives of all of them jointly in case of death of all joint promisors.

September 2017: Q3

(c) Following is the statement of sums payable by Nisar to Mairaj on 4 March 2017:

Date of invoice	Rs.	Remarks
01/01/2016	200,000	Guaranteed by Imran.
08/06/2016	150,000	
Total	350,000	

Nisar sent a cheque for Rs. 100,000 on 5 March 2017. As there were no instructions from Nisar, Mairaj adjusted the payment against the amount of Rs. 150,000. The guarantor (Imran) objected to such appropriation and claimed that adjustment should be made in the order of the date of invoices.

Under the provisions of the Contract Act, 1872 discuss whether the objection of Imran is justified. (03)

Answer

(c) **Application of payment:**

Imran's objection is not valid. In the absence of any intimation from the debtor or circumstances indicating to which debt payment is to be applied, the creditor is free to use his discretion and apply it to any lawful debt actually due and payable to him from the debtor.

March 2019: Q1

a) Briefly explain five rules regarding performance of reciprocal promises under the provisions of Contract Act, 1872. (05)

Answer

(a) Rules regarding performance of reciprocal promises under the Contract Act, 1872

(i) Simultaneous performance

When a contract consists of reciprocal promises to be simultaneously performed, the promisor need not perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

(ii) Order of performance

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they must be performed in that order, and where the order is not expressly fixed by the contract, they must be performed in that order which the nature of the transaction requires.

(iii) Preventing the performance

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

(iv) Mutual and dependent reciprocal promises

Where the performance of one party depends on the prior performance of the other party and party who is liable to perform first, fails to perform it, then such party cannot claim the performance from the other party and must make compensation to the other party for any loss which the other party may sustain by non-performance of the contract.

(v) Promise to do legal & illegal things

Where persons reciprocally promise, firstly, to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

March 2020: Q 2

(c) What is meant by 'Assignment of Contract' under the Contract Act, 1872? State any four rules subject to which a contract may be assigned by act of parties. (05)

Answer

(c) Assignment of contracts:

Assignment of contracts means transfer of contractual rights and liabilities to a third party.

Assignment by act of parties

Assignment by act of parties takes place when the parties to a contract themselves make the assignment. Such an assignment is subject to the following rules:

- (i) If it is a contractual obligation/right involving personal skill or ability then it cannot be assigned.
- (ii) If the contract expressly or impliedly provides that the contract shall be performed by the promisor only then such obligation cannot be assigned.
- (iii) If the contract does not expressly or impliedly provide that the contract shall be performed by the promisor only then the promisor or his representative may employ a competent person to perform such obligation but even then the promisor remains liable to the promisee for proper performance.
- (iv) By Novation the promisor may transfer his liability to a third party with the consent of the promisee and the transferee.

September 2020: Q3 (b)

Sarya Traders (ST) agreed to supply building materials to Khwaja Contractors (KC) on 10 September 2020 for the construction of a charitable hospital in District Malir. However, on due date, ST failed to fulfil their obligation.

Under the provisions of the Contract Act, 1872 explain the rights available to KC under the above situation. Assume time was the essence of the contract. (3)

Answer

Time being essence of the contract, following would be the rights of Khwaja Contractors (KC) under the circumstances:

- I. Contract would be voidable at the option of KC (promisee)
- II. KC may insist that Sarya Traders (ST) should deliver building material. However, in order to claim compensation on account of the delayed supply, KC shall have to give notice to ST of their intention to do so at the time of acceptance of performance at any time other than earlier agreed.
- III. KC may decide not to accept performance beyond the stipulated time and rescind the contract and claim compensation for any damages which it may have sustained due to non-fulfillment of the contract by ST.

September 2020: Q3 (c)

What would be your answer in (b) above if KC had to procure building material from another supplier at a price higher than the price agreed with ST and also had to pay a penalty of Rs. 50,000 to the owner of the hospital for construction delay?

Answer

In this case, ST is liable to pay by way of compensation to KC, the difference between the contract price and the price which KC had to pay for procuring building material.

However, if ST was aware about the penalty, which KC had to pay to the third party due to delay in construction of hospital, at the time of contract with KC, ST would be liable to compensate the amount of Rs. 50,000 to KC.

On the contrary, if ST was not aware of any such penalty at the time of contract with KC, then KC cannot recover the amount of Rs. 50,000 from ST.

September 2020: Q4 (c)

Mohsin and Jaleel jointly borrowed a sum of Rs. 300,000 from Muslim and Munaf jointly. On due date, Mohsin and Jaleel defaulted in making the payment. Munaf, without Muslim's knowledge, filed a suit against Mohsin and Jaleel for the recovery of the amount due.

Under the provisions of the Contract Act, 1872 briefly describe whether Munaf would succeed in his case. (2)

Answer

Munaf will not succeed in his case. He must be joined by Muslim as the right to claim performance rests with all the promisees (i.e. Munaf and Muslim) jointly and a single promisee (i.e. Munaf) cannot claim performance.

CHAPTER NO. 6

DISCHARGE OF CONTRACT AND REMEDIES FOR BREACH

March 2015: Q2

(a) Lalchi Traders agreed to supply cotton yarn to Farzi Textile Limited at a fixed price for one year. Three months after the formation of the contract the price of yarn increased sharply, making it commercially unviable for Lalchi Traders to continue the supply at the agreed price. Therefore, they terminated the contract on the ground of difficulty/impossibility of performance.

Under the provisions of the Contract Act, 1872 briefly describe:

(i) whether the contract would be discharged under the above circumstances. (05)

(ii) what would be your decision if Lalchi Traders were importing yarn and Government has imposed a ban on its import. (02)

Answer

(a) (i) **Contract to do act afterwards becoming impossible or unlawful:**

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible, or unlawful. However, events that make the contract extremely more difficult, costly or less beneficial or commercially unviable or non-profitable than that agreed at the time of its formation, but not impossible, are not accepted as an excuse for non-performance. Therefore, in the given scenario, Lalchi Traders' pleas shall not be acceptable and in the event of non-performance they will be held liable for the breach of contract and the consequential damages.

(ii) A contract is discharged, if after its formation, a law or regulation is adopted that makes performance impossible/illegal. Therefore, due to the imposition of ban on the import of yarn by the Government, Lalchi Traders would be discharged from their liability to perform the contract.

September 2015: Q3

(a) What is meant by discharge of a contract? Briefly describe the modes of discharging a contract by mutual agreement under the provisions of the Contract Act, 1872. (08)

Answer

(a) **Discharge of a contract:**

A contract is said to be discharged when contractual relations between the parties to a contract are terminated or come to an end.

Discharge by agreement:

A contract can be discharged by mutual agreement in any of the following ways:

i. **Novation:**

Novation means the substitution of a new contract for an existing one. This new contract may be between the same parties with new terms, or between new parties with old or new terms.

ii. **Rescission:**

Rescission is the cancellation of a contract by mutual agreement.

iii. **Alteration:**

Alteration means a variation made in the language or terms of a contract with mutual agreement. When this occurs, the original contract is discharged and a new contract is created. The parties in alteration

remain same.

iv. **Remission:**

Remission means acceptance of a lesser amount or lesser degree of performance than what was contracted for in full discharge of the contract.

v. **Waiver:**

Waiver is a unilateral act of one person that results in the surrender of a legal right. Thus, it amounts to releasing a person of certain legal obligation under a contract.

vi. **Promisee's refusal/neglects:**

If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

March 2016: Q2

(b) What do you understand by the terms 'Ordinary damages', 'Special damages' and 'Exemplary damages'? Briefly describe the rules relating to the award of each of the above types of damages under the Contract Act, 1872. (08)

Answer

(b) **Ordinary damages:**

Ordinary damages are those which arise naturally in the usual course of things from the breach itself.

Special damages

Special damages are due to special losses which are in the reasonable contemplation of the parties at the time of formation of contract.

Exemplary damages

Exemplary (vindictive) damages are those which are awarded with a view to punish the wrong doer and not primarily with an idea of awarding compensation to the injured party.

Rules relating to award of above damages:

Ordinary Damages

These damages can be awarded if the following two conditions are fulfilled:

- The aggrieved party must suffer by breach of contract, and
- The damage must be a direct consequence of the breach of contract

Special damages

Special damages can be awarded for the special loss which the parties:

- Knew about
- At the time they made the contract
- As likely to result from such breach of contract

Exemplary damages

The court may award these damages in cases such as:

- a breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party.
wrongful dishonour of a cheque by a banker. In case of wrongful dishonour of a cheque, the smaller the amount of the cheque, larger will be the amount of damages awarded. A trader may recover such damages as wrongful dishonour of cheque shall adversely affect his goodwill but a non-trader whose cheque is

wrongfully dishonoured will have to prove the loss of goodwill before claiming such damages.

September 2017: Q 1

(a) Golden Foods (GF) agreed to supply 2,500 cans to Riaz Grocery Stores (RGS). According to the agreement, the date of delivery was 31 August 2017. However, on the due date GF refused to supply the cans.

Under the provisions of the Contract Act, 1872 discuss the rights of RGS in the above situation assuming that time was the essence of the contract. (03)

(b) What would be your answer to (a) above, if GF supplied the cans on 12 September 2017 and RGS accepted the performance; but suffered a loss on account of delayed supply? (02)

Answer

Consequences of actual breach when time is essence of contract

(a) Contract would be voidable at the option of RGS (promisee). RGS may insist that Golden Foods (GF) should deliver the product and to claim compensation on account of the delayed supply. RGS may decide not to accept performance beyond the stipulated time and claim compensation for any damages which it may have sustained due to non-fulfillment of the contract by GF.

(b) Riaz Grocery Stores (RGS) is not entitled to claim compensation for any damages which it may have sustained through the non-fulfillment of the contract where performance beyond the stipulated time is accepted, unless at the time of acceptance RGS gives notice to GF of its intention to claim damages.

March 2018: Q 2

(a) Saleem entered into a contract for the purchase of 5 vehicles from Phony (Pvt.) Limited (PL) which were to be delivered in the month of February, Saleem also entered into another contract for onward sale of these vehicles to Jabbar Limited (JL). However, PL refused to deliver the vehicles as contracted. Saleem had to buy the vehicles from another supplier at an extra cost of Rs. 2 million for supplying these to JL. Saleem also had to pay compensation of Rs. 0.6 million to JL due to delay in supply.

Under the provisions of the Contract Act, 1872 analyse the above situation and comment whether Saleem is entitled to receive any compensation from PL. (04)

Answer

(a) **Compensation for loss or damage caused by breach of contract:**

Saleem is entitled to receive from Phony (Pvt.) Limited (PL), compensation for any loss or damage caused to him which naturally arose in the usual course of things from such breach i.e. Rs. 2 million. However, such compensation cannot be claimed for any remote and indirect loss or damage sustained by reason of the breach unless the parties knew about such consequences when they made the contract. Hence, PL would only be liable to pay the amount of Rs. 0.6 million claimed by JL if PL knew about this arrangement at the time of entering into the contract.

September 2018: Q 2

(b) Under the provisions of the Contract Act, 1872:

(i) List any five circumstances in which the parties to the contract are not absolved from the performance of their contractual obligations on the ground of supervening impossibility. (05)

Answer

(b) (i) Not an excuse of supervening impossibility

Following is the list of circumstances in which the parties to the contract are not absolved from the performance of their contractual obligations on the ground of supervening impossibility:

- i. Difficulty of performance because of contract is more costly or less beneficial than that agreed
- ii. Commercial impossibility because the contract becomes unviable or non-profitable
- iii. Default of a third party on whose work the promisor is relying
- iv. Strikes, lockouts and civil disturbances unless parties have specifically agreed for that
- v. Partial impossibility of some of the objects of the several contract

March 2019: Q1

(b) Respond to the following scenarios, under the provisions of Contract Act, 1872:

(i) On 11 February 2019, Isfandiyar agreed to sell his house to Javed for Rs. 15 million. On 19 February 2019, Javed came to know that Isfandiyar has finalized a deal for the same house with Jenny. Discuss the option(s), if any, available to Javed. (02)

Answer

(i) Isfandiyar has committed anticipatory breach of contract so Javed has following options:

- He may either treat the contract as rescinded and claim damages from Isfandiyar for breach of contract immediately without waiting until the due date of performance, or
- He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold Isfandiyar responsible for the consequences of non-performance.

March 2020: Q 3

(d) Imran Traders entered into a one-year contract with Minhas Oils Limited for the supply of gravels for their extraction project in Badin at a fixed price of Rs. 30,000 per dumper. Six months after the contract, the diesel prices increased sharply, making it non-profitable for Imran Traders to continue the supply at the agreed price. Therefore, they terminated the contract on the ground of impossibility of performance. Describe whether the contract is discharged in the above situation. (04)

Answer

(d) Contract to do act afterwards becoming impossible or unlawful:

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible, or unlawful.

However, events that make the contract extremely difficult, costly or less beneficial or commercially unviable or non-profitable than that agreed at the time of its formation, but not impossible, are not accepted as an excuse for non-performance.

Therefore, in the given scenario, Imran Traders excuses shall not be acceptable and in the event of non-performance they will be held liable for the breach of contract and the consequential damages.

CHAPTER NO. 7

SPECIFIC TYPES OF CONTRACTS

March 2015: Q 3

(b) Basit and Rahim go into a shop. Basit says to the shopkeeper, 'Let him (Rahim) have the goods and if he does not pay you, I will'.

Under the provisions of the Contract Act, 1872 identify and describe:

- (i) the type of the above contract and whether Basit would be liable in case of Rahim's default. (04)
- (ii) what would be your answer, if Basit said to the shopkeeper, 'Let him (Rahim) have the goods, I will see you are paid'. (03)

Answer

(b)

(i) Contract of guarantee:

The above contract is a contract of guarantee. Contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

In this case, Basit is the surety whereas Rahim and shopkeeper are respectively the 'principal debtor' and 'creditor'.

Since a guarantee may either be oral or written, in case of Rahim's default, Basit would be liable to pay to the shopkeeper.

(ii) Contract of Indemnity:

This is the case of indemnity. A contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promiser himself or by conduct of any other person.

In this case, Basit is the indemnifier and shopkeeper is the indemnity holder.

Yes, Basit is liable to make good any loss which may have been caused to the shopkeeper due to either his own default or the default of Rahim.

September 2015: Q 2

(a) Sobia borrowed Rs. 300,000 from Meller against a gold necklace as security. She agreed to return the amount to Meller after one month. However, on due date Sobia defaulted in payment.

In view of the provisions of the Contract Act, 1872 identify and describe the type of contract Sobia and Meller entered into. Also enumerate the rights available to Sobia and Meher in the above circumstances. (08)

Answer

Pledge:

The above contract is in the nature of pledge. Pledge is the bailment of goods as a security for the payment of a debt or performance of a promise. Sobia in this case is the 'Pawner' and Meller is the 'Pawnee'.

Rights of Meher (Pawnee):

- Meller may bring a suit against Sobia for recovery of the debt. She can retain the necklace pledged as a collateral security.
- She may sell the necklace on giving a reasonable notice of the sale. If the proceeds of such sale are less than

Rs. 300,000 (i.e. the amount due in respect of the debt), Sobia is still liable to pay the balance.

Rights of Sobia (Pawnor)

- Sobia was unable to pay in time but she may redeem the necklace pledged at any subsequent time before its actual sale.
- But in such a case Sobia must pay, in addition, any expenses which have arisen from her default.

In case of sale of necklace by Meher, if the proceeds are greater than Rs. 300,000, Sobia is entitled to receive the excess amount from Meher.

September 2015: Q 2

(b) Under certain special conditions, obligations resembling those created by a contract are imposed by law although the parties have never entered into a contract. In view of the provisions of the Contract Act, 1872 describe the conditions which must be fulfilled for claiming the amount in each of the following cases:

(i) Baqir supplied a jacket to Sultan in order to save him from cold weather. Sultan who was a minor agreed to pay Rs. 2,000 for the jacket although its market price was Rs. 1,500. (03)

(ii) Rohi, who paid the electricity bill of Saulat without being asked, is now demanding payment from Saulat. (01)

(iii) Sami, a coolie picked up the goods purchased by Nadia from the supermarket and took them to her car. Nadia did not object to it. Sami demanded service charges from Nadia. (02)

Answer

(i) Claim for necessities supplied to person incapable of contracting, or on his account:

Baqir can recover the amount from Sultan if following conditions were satisfied:

- i. the jacket supplied was the necessity suited to Sultan's condition in life.
- ii. Baqir can recover the reasonable market value of Rs. 1,500 only from Sultan's property. He cannot recover Rs. 2,000 which Sultan had agreed to pay to Baqir as Sultan, being an incompetent person was not in the capacity to contract.

(ii) Reimbursement of person paying money due by another in payment of which he is interested:

Rohi can recover the amount of electricity bill from Saulat only if the following two conditions were satisfied:

- i. Rohi who made the payment had interest in such payment.
- ii. the payment must be such which Saulat was bound by law to pay.

(iii) Obligation of person enjoying benefit of non-gratuitous act:

Sami can recover the amount of service charges from Nadia if following conditions were satisfied:

- i. Sami had lawfully done the service for Nadia, i.e. Nadia had the option to accept or reject the services rendered by Sami.

Sami did not have an intention to act gratuitously and Nadia had enjoyed the benefits of the service so provided by Sami.

March 2016: Q 3

(a) Bunny extended a credit of Rs. 500,000 to Sohail on the surety of Majid and Rabat. On the date of payment, Sohail defaulted and Majid settled the debt.

Under the provisions of the Contract Act, 1872 briefly describe the rights available to Majid and Rabat against Sohail and Bunny and also between themselves. (08)

Answer

(a) Rights of surety (Majid and Rabat) against principal debtor (Sohail):

Right to indemnity:

In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. Therefore, Majid and Rabat are entitled to recover from Sohail whatever amount they have rightfully paid including the amount of interest.

Right to subrogation:

After making payment and discharging the liability of Sohail, Majid and Rabat are invested with all the rights of creditor (Bunny), which he had against Sohail.

Rights of surety (Majid and Rabat) against creditor (Bunny):

Rights to securities:

Majid and Rabat are entitled to the benefit of every security which Bunny has against Sohail at the time when the contract of suretyship is entered into, whether Majid and Rabat are aware of the existence of such security or not and if Bunny loses, or, without the consent of Majid and Rabat, parts with such security, Majid and Rabat are discharged to the extent of the value of the security.

Right to claim set off:

Majid and Rabat have a right to claim set off if any which Sohail had against Bunny.

Rights against co-sureties (Majid and Rabat):

Right to claim contribution:

Since Majid paid the full amount to Bunny in settlement of Sohail's debt, he has a right to claim contribution from the other co-surety Rabat. Following are the rules of contribution between Majid and Rabat:

In the absence of any contract, Majid and Rabat are liable to contribute equally in case of Sohail's default.

If Majid and Rabat have agreed to guarantee different sums than they are liable to contribute equally, subject to the maximum amount guaranteed by each one of them.

If Bunny releases one of the co-sureties, for instance Majid, it does not discharge Rabat, neither does it free Majid from his responsibility to Rabat.

March 2017: Q 1

(b) Danish while buying a smart phone from one of the retailers, found a satellite phone on the market floor. Danish in spite of considerable search could not find the owner of the phone. He gave the phone to the retailer for safe custody till the real owner is found. Under the provisions of the Contract Act, 1872 explain the following:

(i) The type(s) of contractual relationships, if any, between Danish, the retailer and the real owner of the phone. (03)

Answer

(i) **Bailment, Bailor and Bailee:**

The contract which exists between Danish and the retailer is a bailment contract. Danish in this case is the bailor while the retailer is the bailee.

The contract which exists between Danish and the real owner is a Quasi Contract, an obligation imposed by law in absence of any agreement between the parties, and on taking the custody of the satellite phone, as a finder of lost goods, Danish is subject to the same responsibility as those of a bailee while the real owner is the bailor.

March 2017: Q2

(c) Vazir said to Saulat, "I will buy speed boats worth Rs. 10,000,000 from you, if you obtain the license for me to operate the boats at Clifton beach". Saulat agreed and applied for the license and deposited Rs. 100,000 as processing fee. However, before the issuance of license, the city government-imposed ban on the issuance of new licenses. Saulat wants Vazir to buy the speed boats as he had made necessary efforts to arrange for the license. However, Vazir refuses to buy the speed boats from Saulat.

Under the Contract Act, 1872 identify the type of contract between Vazir and Saulat. Also state whether Vazir is now bound to purchase the speed boats from Saulat. (04)

Answer

(c) Contingent Contract:

The contract between Vazir and Saulat is a contingent contract whose performance is based on the happening of certain event collateral to the contract, i.e. arranging of license for Vazir. If such event has not happened the performance of the contract does not become due. It does not matter at all that Saulat had applied for the license and also paid processing fee of Rs. 100,000 to the authorities. Thus Vazir is not bound to purchase the boats from Saulat.

September 2017: Q 3

(b) (ii) Explain the term 'right of subrogation'. (03)

Answer

(b) (ii) Right of subrogation

When the surety pays off the debt on default of the principal debtor or performs a guaranteed duty, he is invested with all the rights and remedies which the creditor had against the principal debtor. This is called the right of subrogation.

March 2018: Q2 b

(b) (ii) briefly describe various types of quasi-contracts. (05)

Answer

Different types of quasi contract

i. Supply of necessities:

If a person incapable to enter into contract or his dependent is supplied by another person necessities suited to his conditions in life, the person supplying such necessities is entitled to be reimbursed the price from the property of such incompetent person.

ii. Payment by interested person:

A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

iii. Person enjoying benefit of non-gratuitous act/goods:

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

iv. Finder of goods:

A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

v. Payment by mistake or under coercion:

A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

March 2018: Q 3

Under the provisions of the Contract Act, 1872 analyse and comment on the following situations:

(a) Abid has obtained a loan of Rs. 800,000 from Saqib. Loan was given on the surety of Munib, Hamid and Suleman with maximum limits of Rs. 150,000, Rs. 250,000 and Rs. 400,000 respectively. Abid repaid Rs. 200,000 and defaulted. Comment and compute the amount payable by each surety. (03)

(b) Shafiq obtained a loan from Qasim on the surety of Anwar. Qasim also obtained a charge over Shafiq's car at the time of disbursement of loan. However, Anwar was unaware of this security. Qasim gave up the charge over the car and Shafiq defaulted. Comment on the position of Anwar. (03)

Answer

(a) Liabilities of co-sureties bound in different sums:

Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit. Hence the remaining amount would be payable as follows:

Munib	Rs. 150,000
Hamid	Rs. 225,000
Suleman	Rs. 225,000
Total	Rs.600,000

(b) Surety's right to benefit of creditor's securities

Anwar is entitled to the benefit of every security which Qasim has against Shafiq at the time when the contract of suretyship is entered into, whether Anwar knows of the existence of such security or not. However, if Qasim obtained charge over Shafiq's car after the contract of suretyship was entered into then giving up the charge will not discharge/reduce Anwar's liability.

September 2018: Q 4

(a) Mujeeb obtained a generator on lease for a period of six years from Munaf at an annual rent of Rs. 120,000. Fareed executed a contract of guarantee in favour of Munaf guaranteeing due payment of rent by Mujeeb. In the third year, Mujeeb defaulted in payment. Munaf sued Fareed and got a decree. Fareed, thereafter, gave a notice to Munaf revoking his guarantee for the remaining period of lease.

Under the provisions of the Contract Act, 1872 identify the nature of Fareed's guarantee and explain whether Fareed would be discharged under the above circumstances. (04)

Answer

(a) Revocation of specific guarantee

The guarantee provided by Fareed is in the nature of 'specific guarantee' and not a 'continuing guarantee' because the lease of generator is for six years in total (whole and indivisible period) to guarantee the whole/single debt comprising of six annual rents of Rs. 120,000 each.

The guarantee provided by Fareed being a specific guarantee and his liability comes to an end when the whole guaranteed debt of Rs. 720,000 comprising six annual lease rentals of Rs. 120,000 each is duly discharged. Therefore, he cannot revoke his guarantee in between before the payment of whole guaranteed debt. Fareed is not discharged.

September 2018: Q 2

(b) (ii) Briefly describe the conditions in which a pledge made by a mercantile agent is considered to be a valid pledge. (03)

Answer

(ii) Pledge by a mercantile agent (non-owners):

Under the following conditions a valid pledge may be created by the mercantile agent:

- the agent is in possession of the goods or documents of title to the goods with the consent of the owner
- the agent pledges the goods while acting in the ordinary course of business of a mercantile agent provided:
 - the pawnee acts in good faith and
 - the pawnee has not at the time of the pledge, notice that the agent has no authority to pledge.

September 2018: Q 2

(c) Zubair agrees to construct a bungalow for Ubaid for Rs. 20 million on the condition that payment will only be made after Muneer, an architect, certifies that the bungalow has been constructed in accordance with the layout plan.

Under the provisions of the Contract Act, 1872 describe the nature and validity of the above contract. (02)

Answer

(c) Contingent contract:

It is a contingent contract as the condition i.e. certification of the construction in accordance with the layout plan by a third party is collateral to the contract. Although it is a valid contract, the performance can only be enforced by Zubair after happening of the collateral event. i.e. certification by Muneer.

March 2019: Q 3

(b) Salim gave a loan of Rs. 100,000 to Ahmed carrying a mark-up of 10% per annum. Amir and Rehan agreed to act as Ahmed's sureties. In the light of Contract Act, 1872 determine, along with reasons, how much each surety would be liable (in Rupees) in the following independent scenarios:

(i) Ahmed defaulted and Salim being aware of weak financial position of Rehan, asked Amir and Rehan to pay 75% and 25% of the default respectively. (02)

(ii) Salim without discussing with Rehan released Amir from the suretyship. Ahmed defaulted and Salim asked Rehan to pay the entire amount. (02)

Answer

(b)

(i) When two or more persons are co-sureties for the same debt, either jointly or severally, in the absence of any contract to the contrary, they are liable, as between themselves, to pay an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Accordingly, the liability will be divided in ratio of 50:50 and not 75:25 and Amir and Rehan would be liable for Rs. 55,000 each.

(ii) Where there are co-sureties, a release by the creditor of one of them does not discharge the other; neither does it free the surety so released from his responsibility to the other sureties. Accordingly, Amir and Rehan will still be liable for Rs. 55,000 each.

September 2019: Q 1

(b) Under the provisions of the Contract Act, 1872 define pledge. Also describe the conditions in which a pledge made by a non-owner is considered to be a valid pledge. (05)

Answer

(b)

Pledge

The bailment of goods as security for payment of a debt or performance of a promise is called a 'pledge'. The bailor in this case is called 'Pawner'. The bailee is called the 'Pawnee'.

Following are the conditions in which a valid pledge can be created by non-owner:

(i) Pledge by a mercantile agent:

If the agent is in possession of the goods or documents of title to the goods with the consent of the owner, any pledge made by him while acting in the ordinary course of business of a mercantile agent shall be valid provided

- The pawnee acts in good faith and
- The pawnee has not at the time of the pledge, notice that the agent has no authority to pledge.

(ii) Pledge by person in possession under voidable contract:

When a person has obtained possession of the goods under a voidable contract and he pledges those goods before the contract has been rescinded, the pawnee of such goods acquired a goods title to them provided the pawnee acts in good faith and without notice of the pawnor's defect of title.

Pledge by seller in possession after sale:

Where a seller having sold goods, continues to be in possession of the goods or of the documents of title to the goods and pledges them either himself or through a mercantile agent to a person who pledges them in good faith and without notice of the sale, it will be a valid pledge.

Pledge by buyer in possession before sale:

Where a person having bought or agreed to buy goods obtains with the consent of the seller, possession of the goods or documents of title to the goods and pledges them either himself or through an agent, the pawnee who acts in good faith and without notice of any right of the original owner is respect of the goods. The pledge of goods will be valid.

Pledge by co-owner in possession:

One of the several co-owners of goods in possession thereof with the assent of the other coowners may create a valid pledge of the goods if the pawnee acts in good faith and without notice about the co-owners.

September 2019: Q 3

Respond to the following scenarios, under the provisions of the Contract Act, 1872:

(d) Majid and Soomro went to a money lender. Majid said to the money lender, 'Let Soomro have a loan of Rs. 50,000, I ensure that you will be paid'. Identify and describe the type of contract and state Majid's responsibility in the contract. (03)

Answer

(d) **Contract of Indemnity**

This is the case of indemnity. A contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promiser himself or by conduct of any other person.

In this case, Majid is the indemnifier and money lender is the indemnity holder.

Yes, Majid is liable to make good any loss which may have been caused to the money lender due to either his own default or the default of Soomro.

March 2020: Q 2

(a) Mohsin acquired a piece of agricultural land in Moro, Sindh from a local landlord, Qasim Soomro, on a lease term of twenty years. The revenue payable by Qasim Soomro on his land to the Provincial Government was in arrears. As a result, the land was advertised for sale by the Provincial Government. Mohsin, in order to prevent the sale of land, paid the sum due by Qasim Soomro to the Provincial Government.

Under the provisions of Contract Act, 1872 explain whether Mohsin can recover such amount from Qasim Soomro. (02)

Answer

(a) Payment by interested person:

To constitute a quasi-contract and be entitled for reimbursement, following conditions must be satisfied:

- (i) the person who made the payment must have his own interest in the payment; and
- (ii) the other person must be bound by law to pay.

In the given scenario, Qasim Soomro was legally bound to pay the land revenue to the Provincial Government and Mohsin, being interested in such payment, as his lease would have been annulled upon sale of land by the provincial government, is entitled to recover the amount from Qasim Soomro.

September 2020: Q 4 (b)

Sulman's son was missing. Mehmood, one of the bodyguards of Sulman, volunteered to find Sulman's son. Meanwhile, Sulman gave an advertisement in the newspaper announcing an award of Rs. 25,000 to anyone who finds the missing boy. Mehmood found the boy and brought him home. Sulman refused to pay the reward and Mehmood filed a suit against him.

Under the provisions of the Contract Act, 1872 briefly describe whether Mehmood is entitled to the reward.

Answer

(b)

In order for Mehmood to claim the reward from Sulman, it is necessary for him to prove that he was aware of Sulman's proposal before finding the missing boy.

As the communication of the proposal is complete when it comes to the knowledge of the person to whom it is made.

Under the given circumstances, since Mehmood acted in ignorance of the offer, he is not entitled to claim the reward from Sulman.

CHAPTER NO. 8

AGENCY

September 2014: Q3

(b) Arif was running a meat shop in Islamabad. He wanted to attend the wedding of his sister in Peshawar so he asked his friend, Moiz, to look after his shop during his absence. While managing the shop, Moiz noticed that the deep-freezer in the shop was not working properly. In order to save the meat from being spoilt, he sold it at a discount of 5% and had the freezer repaired the next morning. Looking at customers' positive response, Moiz continued to offer the meat at 5% discount. Upon his return from Peshawar, Arif, being unhappy with the situation, immediately discontinued the discount and now wants to recover the loss from Moiz.

In view of the provisions of the Contract Act, 1872, analyse the above situation and explain the rights and liabilities of Arif against Moiz. (10)

Answer

(b) Law of Agency:

The relationship between Arif and Moiz, in the above situation, is that of an agency and presence of consideration is not necessary for creation of an agency. The request by Arif to Moiz to look after Arif's shop in his absence tantamount to an express authority which may be given by words spoken or written.

Arif's liability against Moiz as a principal:

Since Arif asked Moiz to look after his shop during his absence, he is bound to indemnify Moiz against all expenses incurred by Moiz on the repair of deep-freezer. The repair of deep-freezer was a lawful act done by Moiz in exercise of the authority conferred on him. Further, Arif is also bound to bear the discount of 5% which Moiz offered to the customers on the first day, on the pretext that, an agent has the authority in an emergency to do all such acts as a man of ordinary prudence would, for protecting his principal from losses under similar circumstances.

Rights of Arif;

However, Moiz's action of continuing the discount of 5% on sale of meat, following the repair of deep-freezer, was beyond the authority bestowed upon him by Arif as Arif had simply asked him to look after his shop in his absence.

Further, an agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss is sustained he must make it good to his principal and if any profit accrues he must account for it.

In view of above, Moiz's act of offering 5% discount after the first day cannot be justified as a lawful act necessary for the purpose, or usually done in the course of conducting such business.

Resultantly, Arif is entitled to recover the loss incurred as a result of this 5% discount on the price that had been originally fixed by Arif.

March 2015: Q3

(a) Under the provisions of the Contract Act, 1872 describe the circumstances in which an agent is presumed to be personally liable on the contract to third parties. (08)

Answer

(a) Circumstances where an agent becomes personally liable to third parties:

Following are the circumstances under which an agent is personally liable to third parties:

Foreign principal:

When an agent contracts for a principal resident abroad he is presumed to be personally liable.

Principal cannot be sued:

An agent is also presumed to incur personal liability where he contracts on behalf of a principal who though disclosed cannot be sued. E.g. where promoters contract for a projected company, they are held liable personally as the company being non-existent at the time of the contract cannot be sued.

Undisclosed Principal:

Where an agent acts for an undisclosed principal and contracts in his own name then he is personally liable to the third parties,

Agency coupled with interest:

In case of agency coupled with interest, since the agent has himself an interest in the property which forms the subject matter of the agency therefore the agent is personally liable to the extent of his interest.

Agent exceeding his authority:

Where an agent while acting in the course of business of agency exceeds his authority, he is personally liable for the excess part if it is a separable transaction otherwise for the entire transaction.

Improperly appointed sub-agent:

An agent is personally liable to third parties for the acts of an improperly appointed sub-agent.

Agent incurring personal liability:

Where an agent, while acting in the course of business of agency incurs personal liability he is personally liable on the contract.

Pretended agent:

A pretended agent, if the principal does not ratify his act, is personally liable to third parties for the loss or damage incurred by them because of dealing with him.

Criminal act:

Where an agent has been employed to do a criminal act, the agent is not entitled to indemnify himself against the consequences of that act and is personally liable for it.

Special contract:

If an agent, while acting in the course of business of agency enters into a special contract with the third party that he will be personally liable on the contract then the agent is personally liable.

Unnamed principal:

If an agent declines to disclose the identity of his principal then he is personally liable to the third party.

Custom:

An agent is personally liable on a contract if there is any usage or custom of a market or trade to that effect. e.g. stock brokerage business.

September 2016: Q3

(a) Zeshan is engaged in the business of buying and selling town houses in Lahore for the past many years and Inam is his agent. Due to the recent growth in construction business, Zeshan has decided to buy a small cement factory in the outskirts of Lahore and has asked Inam to negotiate the deal with the seller. Inam who has no

technical knowledge of the cement industry has employed Saqib for his assistance.

Under the provisions of the Contract Act, 1872 briefly describe:

(i) The status of Saqib and whether Inam is justified in employing Saqib to perform his work.(03)

(ii) Saqib's responsibility towards Inam and Zeshan.(02)

(iii) Inam's responsibility for Saqib's acts, if employed without Zeshan's authority.(02)

Answer

(i) **Sub-agent:**

Saqib may be regarded as a sub-agent as he is appointed by, and acting under the control of Inam (original agent) in the business of agency.

When agent cannot delegate:

Inam cannot lawfully employ Saqib to perform acts which he has expressly or impliedly undertaken to perform personally unless it is required by the ordinary custom of trade or the work undertaken by Inam is of such nature that it requires delegation.

In the above circumstances the appointment of a professional was necessary; therefore, Inam is justified in Saqib's appointment.

(ii) **Sub-agents' responsibility:**

Saqib is responsible for his acts to Inam, but not to Zeshan, except in case of fraud or wilful wrong.

(iii) **Agent's responsibility for sub-agent appointed without authority:**

If Inam, without having authority to do so appoints Saqib to act as sub-agent, Then Inam stands towards Saqib in the relation of a principal to an agent, and is responsible for Saqib's acts both to Zeshan and to third persons.

September 2017: Q5

(b) Kalim Real Estate (KRL) by misrepresenting themselves as an agent of Goofy Builders (GB), negotiated and entered into a contract with Tameer Associates for acquisition of a piece of land for GB.

Under the provisions of the Contract Act, 1872 explain the liability of KRL in the above situation. (05)

Answer

(b) Since Kalim Real Estate (KRL) acquired a piece of land on behalf of Goofy Builders (GB), without their knowledge or authority, KRL's liability would be analysed under the following two circumstances:

When GB elects to ratify KRL's acts:

If GB ratifies KRL's acts, the same effects will follow as if the acts had been performed by GB's authority.

Being agent, KRL is bound to conduct the business according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. If KRL acts otherwise, in case of any loss, KRL would be responsible to make good the loss to GB and if any profit accrues, account for such profit to GB.

Similarly, KRL would be liable to compensate GB in respect of the direct consequences of their negligence, want of skill or misconduct.

However, if KRL without the knowledge of GB deals in the business of agency on KRL's own account, GB is entitled to claim any benefit which may have resulted to KRL from the transaction.

When GB disown KRL's acts:

If GB does not ratify the agency, the contract would be between KRL and Tameer Associates (TA). If TA suffers a loss due to breach of contract, KRL would be responsible to make good the loss.

March 2018: Q 1

(c) Under the provisions of the Contract Act, 1872 analyse the following situations and comment on the type and validity of the contracts:

(i) Arif is the sole proprietor and deals in sale of product X. On 1 January 2018, Arif entered into two months' contract with Abbas for the promotion and sale of product X on commission basis. On 4 February 2018, Arif died in a car accident. Abbas came to know about it on 15 February 2018. However, Abbas continued selling the product as per the contract. (03)

(ii) Pawan owed Rs. 5 million to Ghafoor but was unable to pay due to liquidity constraints. However, Pawan owned a property and on 1 November 2017 he authorised Ghafoor to collect rent of the property until he recovers his dues. On 1 March 2018 Pawan terminated the authority of Ghafoor to collect rental although his dues were not fully satisfied. (04)

Answer

(i) Termination of agent's authority:

It's a contract of agency. The termination of the authority of Abbas as an agent takes effect when the death of Arif becomes known to Abbas i.e. 15 February 2018. Therefore, Arif's estate will be liable for any sale made and commission earned until 15 February 2018. For the sale made after 15 February 2018 Abbas will be personally liable.

(ii) Termination of agency where agent has an interest in subject matter:

It's a contract of agency. Pawan cannot terminate the authority of Ghafoor to collect rent as the agency is coupled with interest and is therefore irrevocable. However, agency coupled with interest can be revoked if the contract of agency contains an express provision for the revocation of agency.

March 2018: Q 2

(b) Under the provisions of the Contract Act, 1872:

(i) describe co-agent (02)

Answer

(i) Co-agent:

Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him.

March 2019: Q 1

(b) Respond to the following scenarios, under the provisions of Contract Act, 1872:

(iii) Noman rented his house to Ahsan under a contract terminable on three months' notice. Noman's wife without discussing with Noman, sent a termination notice to Ahsan. When Noman came to know of the situation, he ratified the act of sending of notice to Ahsan. Discuss whether the notice given by Noman's wife is valid. (02)

(iv) While attending a seminar, Khizar told a group of people on his table that he is the agent of Lucky. Lucky smiled considering it a joke. Later, Moiz who was sitting on the table sold security cameras and surveillance system to Khizar on credit believing him to be agent of Lucky. Comment on whether a contract of agency is established between Khizar and Lucky. (02)

Answer

(iii) An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of terminating any right or interest of a third person, cannot be ratified.

Considering the above, notice served by Noman's wife is not valid. If Noman wants, he will have to give fresh notice.

(iv) Khizar in this situation has become agent of Lucky by estoppel. Lucky is bound by this transaction and he is stopped from denying the existence of the agency since he gave out clear representation to others by smiling and keeping quiet. Moiz relied on representation of existence of agency. Thus, if he suffers a loss from the transaction, he may hold Lucky liable as principal.

March 2019: Q 2

(c) Under the Contract Act, 1872 state an agent's responsibility in case he appoints a sub-agent without having the principal's authority. (02)

Answer

(c) Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for the acts of the sub-agent, both to the principal and to third persons.

September 2019: Q 1

(a) Fauzia is working as a sales girl for a pottery store, owned by Mirza Baig, in a famous mall. Fauzia, in the absence of Mirza Baig, often displays her own pottery items on the shelves and uses her employer's time, resources and facilities to sell her own items.

Recently, on a surprise visit to the store, Mirza Baig caught Fauzia selling her own items in the store. Upon investigation, it was also revealed that on certain instances Fauzia had sold Mirza Baig's pottery wares at a higher rate than recommended and pocketed the difference.

Under the provisions of the Contract Act, 1872 identify the nature of contractual relationship between Fauzia and Mirza Baig. Discuss the duties breached by Fauzia and the rights available to Mirza Baig under the above circumstances. (05)

Answer

(a) Agency:

The question deals with the law of agency and the relationship between Fauzia and Mirza Baig is that of agent and principal.

Duties breached by Fauzia (agent's duties towards principal)

In the given scenario, Fauzia breached following duties:

(i) Duty to follow principal's directions or customs:

Fauzia's first duty was to act within the scope of her authority and perform the agency work according to the directions given by the principal. Fauzia's selling her principal's items at a higher rate than recommended rate without his consent amounts to acting beyond her authority.

(ii) Duty to carry out work with reasonable diligence and in good faith:

Fauzia's act of using her principal's time, resources and facilities to sell her own items in place of her principal's items tantamount to breach of application of reasonable diligence and good faith.

(iii) Duty not to deal on her own account (conflict of interest):

The action of Fauzia in placing her own items on the shelves indicates that her own personal interest was allowed to conflict with the interest of her principal.

(iv) Duty not to make any secret profit out of agency:

Fauzia's act of selling her principal's items at a higher rate and keeping the price difference into her own pocket amounts to making secret profit.

Rights of Mirza Baig:

Following are the rights available to Mirza Baig under the given circumstances:

(i) Right to proper account:

Mirza Baig is entitled to get proper accounts of his money from Fauzia.

(ii) Right to receive benefits gained by agent (secret profit):

Since Fauzia was dealing on her own account in the business of agency, Mirza Baig has the right to ask Fauzia for surrendering all the benefits which may have resulted from the transactions (secret profit) to him. He is also entitled for the compensation of any loss caused to him due to Fauzia's misconduct.

(iii) Right not to pay remuneration:

Since Fauzia is guilty of misconduct, Mirza Baig is not required to pay any remuneration to Fauzia for that part of the business which she has misconducted.

(iv) Terminate the agency:

Mirza Baig has a right to terminate the agency relationship with Fauzia.

March 2020: Q 3

(a) Four Wheels Limited (FWL), misrepresenting themselves to be the agents of Big Motors (BM), persuaded Motor Manufacturers (MM) to sell them 10 luxury Jeeps customised for BM. Discuss FWL's liability under the above situation. (05)

Answer

(a) Since Four Wheels Limited (FWL) acquired 10 luxury Jeeps, customised for BM, on behalf of Big Motors (BM), without their knowledge or authority, FWL's liability would be analysed under the following two circumstances:

(i) When BM elects to ratify FWL's acts:

If BM ratifies FWL's act, the same effects will follow as if the act had been performed by BM's authority.

Being agent, FWL is bound to conduct the business according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. If FWL acts otherwise, in case of any loss, FWL would be responsible to make good the loss to BM and if any profit accrues, account for such profit to BM.

Similarly, FWL would be liable to compensate BM in respect of the direct consequences of their negligence, want of skill or misconduct.

However, if FWL without the knowledge of BM deals in the business of agency on FWL's own account, BM is entitled to claim any benefit which may have resulted to FWL from the transaction.

(ii) When BM disowns FWL's act:

If BM does not ratify the agency, the contract would be between FWL and Motor Manufacturers (MM). If MM suffers a loss due to breach of contract, FWL would be responsible to make good the loss.

CHAPTER NO. 9

PARTNERSHIP ACT, 1932

September 2014: Q 4

(a) Rustum, Mahmood and Wali are partners in a firm, Wali wants to admit his sixteen-year-old son Raghiv as a new partner. Under the provisions of the Partnership Act, 1932 can Raghiv be admitted to the partnership business? State the rights, liabilities and limitations of Raghiv, if he is admitted to the partnership business. (05)

(b) Sharing net profits usually creates a very strong inference that the parties have formed a partnership. But in certain situations, the fact that the profits are shared or the parties have agreed to share the profits will not by itself create a presumption that a partnership was intended. List such situations as given in the Partnership Act, 1932. (05)

Answer

(a) Minor's admission to the partnership:

Partnership is created by a valid contract. Since a minor is not capable of entering into a contract, a contract by or with a minor is void ab-initio. Accordingly, a minor cannot be a partner in the firm. However, a minor can be admitted to the benefits of partnership with the consent of all the partners for the time being. i.e. before admission of a minor there must be an existence of partnership.

Rights, liabilities/limitations of Raghiv (minor):

The rights, liabilities and limitations of Raghiv who has been admitted to the benefits of partnership are governed by the following rules:

Rights:

- Right to share property and profits of the firm as agreed by the partners.
- Right of inspecting and taking copies of accounts of the firms ONLY.
- Right not to be adjudged insolvent.

Liabilities:

- Personally not liable to third parties for the debts of the firm i.e. limited liability.
- His share is liable for the acts of the firm.

Limitations:

- No status of partner. The minor is not entitled to take part in the conduct of the business of the firm.
- No suit against partners for profit and property except after disconnecting his relation with the firm.
- Not entitled to have access to books other than accounts.

(b) Sharing profits is not a conclusive evidence of a partnership:

These situations are:

- The joint owners of a property who share profits or gross returns arising from the property are not partners,
- Where the profits are received by a creditor in payment of a debt or as interest on loan.
- Where the profits are received as wages by an employee.
- Where the profits are received as an annuity by a widow or child of a deceased partner.
- Where the profits are received as consideration for the sale of property/ goodwill or share thereof.
- A transferee of a partner's interest.

- A minor who is admitted to the benefits of an existing partnership.

March 2015: Q 4

(a) Nomi, Sultan and Behram have decided to establish a partnership business to run a departmental store. Under the provisions of the Partnership Act, 1932 advise them about their mutual rights and liabilities towards each other. (05)

(b) The above partnership business was started in January 2015. In March 2015 Behram received an overdraft of Rs. 100,000 from the partnership's bank. He informed the bank that the money would be used to construct a new cash counter in the departmental store. However, he used the money to pay for his wife's Dubai trip. Advise Nomi, Sultan and Behram about their rights and liabilities and that of the firm in relation to the above transaction (05)

Answer

(a) Mutual rights and liabilities:

Subject to contract between the partners, following are their mutual rights and liabilities:

- i. Every partner has a right to take part in the conduct of the business;
- ii. Every partner is bound to attend diligently to his duties in the conduct of the business;
- iii. Every partner shall have the right to express his opinion in case of difference arising as to ordinary business matters;
- iv. Every partner has a right to have access to and to inspect and copy any of the books of the firm;
- v. A partner is not entitled to receive remuneration for taking part in the conduct of the business;
- vi. The partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;
- vii. Where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;
- viii. A partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum;
- ix. The firm shall indemnify a partner in respect of payments made and liabilities incurred by him:
 - a. in the ordinary and proper conduct of the business, and
 - b. in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- x. A partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

(b) Behram has clearly exceeded his authority. However, Nomi and Sultan cannot repudiate Behram's transaction with the bank. As a trading partnership, all the partners have the implied authority to borrow money on the credit of the firm and the bank is under no obligation to find out the purpose for which the loan has actually been used.

Further, where a partner acting within his apparent authority receives money from a third party and misapplies it, the firm is liable to make good the loss. As a result, each of the partners is jointly and severally liable to the bank for repayment.

However, Behram would be personally liable to the other partners for Rs. 100,000 and shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

Further consequence of his breach of duty not to act in any way prejudicial to the partnership business; the partnership could be wound up.

September 2015: Q 4

(a) Munaf, a sole proprietor, engaged in the business of selling cooking oil to wholesalers agreed to admit Lari in his business on the following terms:

That Lari shall not bring any capital and shall not be liable for any losses of the firm. However, he shall be entitled to receive Rs. 150,000 on introducing any new client to the business, share 40% of the profits and have the right to exercise all the powers of a partner in the firm.

Analyze the above situation and advise whether a partnership is constituted between Munaf and Lari under the provisions of the Partnership Act, 1932. (05)

(b) Meher, Abid, Rani and Azra were partners in Abid Associates, a firm of town planners and consultants. Bari Builders supply goods to Abid Associates on credit. Abid died on 5 January 2015. Meller, Rani and Azra decided to continue the business in the old firm's name. However, neither the surviving partners nor the representative of Abid gave public notice to this effect.

Due to insolvency of a major client, Abid Associates was facing difficulty in making payment to Bari Builders. When Bari Builders investigated the matter, they came to know about the death of Abid. They have now filed suits for the recovery of outstanding balance, severally against Abid's estate and Meher, as the credit was extended on the faith of Abid and Meher.

In view of the provisions of the Partnership Act, 1932 explain whether Bari Builders are justified in filing the above suits and would they succeed in recovering the outstanding amount under the above circumstances. (05)

Answer

(a) Mode of determining existence of partnership:

In determining whether Munaf and Lari constitute a partnership, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

The essentials of a partnership are:

- i. There should be a relationship by agreement between two or more persons;
- ii. They should run a business with the intention of sharing profits; and
- iii. The business should be run by all, or by any one of them acting for all.

The Partnership Act does not require that a partner must contribute money or capital. Similarly, the partners may also agree that any one of them shall not be liable for losses.

Thus, in the presence of the above essentials and the fact that Lari is entitled to exercise all the powers of a partner Munaf and Lari are said to have constituted a partnership.

(b) Liability of a partner for acts of the firm:

Where after a partner's death, the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death. Bari Builders cannot sue Abid's estate for the recovery of the outstanding amount of the credit which was extended after Abid's death.

However, Bari Builders can recover the outstanding amount from Abid's estate only if the credit was extended to the firm before Abid's death.

Moreover, since every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner, Bari Builders may file a suit against Meller for the recovery of outstanding balance and succeed, provided Meher was a partner in the firm at the time when credit was extended to the firm.

March 2016: Q 4

(a) Maqbool, Rufi and Sham are the partners in Zeeshan Builders (ZB), a firm engaged in the business of constructing industrial and residential projects in Balochistan. Sham is also the owner of a cottage industry in Quetta. Sham has obtained a long-term loan for his cottage industry from Dostana Bank Limited by transferring his interest in ZB to the bank by way of a mortgage.

Under the provisions of the Partnership Act, 1932 describe the rights and disabilities, if any, of Dostana Bank Limited in the above circumstances. (06)

(b) In the above partnership business, Rufi intends to acquire a plot of land for the firm with his own money. However, he is not certain whether the plot would be considered as partnership property.

Under the provisions of the Partnership Act, 1932 advise Rufi as what is considered to be included in the partnership property and how it is to be applied. (04)

Answer

(a) Rights of Dostana Bank Limited:

Following rights are available to the bank:

- i. entitlement to receive the share of the profits of Sham {the transferring partner}.
- ii. on the dissolution of the firm or on retirement of Sham the bank is entitled to receive:
 - a. the share of the assets of the firm to which Sham is entitled.
 - b. an account from the date of the dissolution for the purpose of ascertaining the share.

Disabilities of Dostana Bank Limited:

The bank shall not be treated as a partner in the firm and during the continuance of the partnership, shall not be entitled to:

- interfere in the conduct of the business of the firm.
- require accounts.
- inspect the books of the firm.
- challenge the accounts of profits agreed to by the partners.
- sue for dissolution of the firm.

(b) Property of the firm:

Subject to contract between the partners, the property of the firm includes:

- All property originally brought into the common stock of the firm;
- All rights or interest in the property originally so brought;
- All property acquired, by purchase or otherwise, by the firm or for the firm and all rights and interest in any property so acquired; and
- Goodwill of the business of the firm;
- Unless, any contrary intention appears any property purchased with partnership money with or without other partners' consent will be deemed to be partnership property.

Therefore, the plot of land which Rufi intends to acquire for the firm with his own money shall become firm's property only if partners intend to make it so.

Application of the property of the firm:

Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

September 2016: Q 4

(a) Raheel, Samina and Umair have agreed to constitute a partnership for carrying on a business of printing study text for CA students in Peshawar. Raheel wants to specify the rights and duties of partners in the partnership agreement so that these can be changed with mutual consent of all the partners whereas Samina and Umair do not consider it necessary and believe that the implied authority may be extended to bind the firm whenever required.

Under the provisions of the Partnership Act, 1932 list:

(i) the general duties of partners which cannot be modified by an agreement amongst them. (03)

(ii) the restrictions imposed on the implied authority of a partner in the absence of any usage or custom of trade. (04)

(b) In the above partnership business, assume Umair is a minor who has been admitted to the benefits of the partnership with the consent of Raheel and Samina. Under the provisions of the Partnership Act, 1932 list the rights and disabilities of Umair before attaining majority. (03)

Answer

(a)

(i) General duties of partners:

Following are the mandatory duties of a partner that cannot be changed by an agreement amongst the partners:

- Duty to be just and faithful.
- Duty to carry on business to the greatest common advantage.
- Duty to render true accounts.
- Duty to provide full information.
- Duty to indemnify for loss caused by fraud.
- Duty to be liable jointly and severally - unlimited liability.
- Duty to act within authority.
- Duty in case of emergency.

(ii) Restrictions on the 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:

- submit a dispute relating to the business of the firm to arbitration,
- open a bank account on behalf of the firm in his own name,
- compromise or relinquish any claim or portion of a claim by the firm,
- withdraw a suit or proceeding filed on behalf of the firm,
- admit any liability in a suit or proceeding against the firm,
- acquire immovable property on behalf of the firm,
- transfer immovable property belonging to the firm, or
- enter into partnership on behalf of the firm.

(b)

Position of a minor before attaining majority:

The rights and disabilities of Umair before attaining majority are as follows:

(i) Rights:

- right to share property and profits of the firm as agreed by the partners.
- right to have access to accounts of the firm and not to the secret books of the firm.
- right not to be adjudged insolvent

(ii) Disabilities:

- he will not be considered as a partner.
- cannot file suit against partners for profit and property except after disconnecting his relation with the firm.
- not entitled to have access to books other than accounts.

March 2017: Q 4

(a) Amjad enjoys a very good credit standing in the market. Kashif, owner of Kashif Electronics, represents Amjad as his partner. Kalim on the faith of such representation supplied laptops to Kashif Electronics on credit. Kashif defaulted and Kalim filed a suit for the recovery of the amount against both Amjad and Kashif. Under the provisions of the Partnership Act, 1932 analyse the above situation and explain whether Amjad would be liable to pay the outstanding amount to Kalim. (04)

(b) Asghar, Babar and Careem are carrying on agricultural business in partnership, they have agreed to share the profits in the ratio of 4:3:2 respectively. Careem is not liable for the losses of the firm. Under the provisions of the Partnership Act, 1932 analyse and comment on each of the following independent situations:

(i) Asghar, who is responsible for procurement, has suggested to buy seeds and pesticides from Zubair Enterprises, a supplier of crop products, as the seeds and pesticides offered by him are of good quality and at a very reasonable price. However, Babar is not in agreement with Asghar. (03)

(ii) In February 2017, the partnership incurred substantial losses due to heavy floods in the area and the partnership assets are not sufficient to meet the firm's liabilities. A number of creditors have filed a suit for recovery of the amount from Careem. (03)

Answer

(a) Partner by Estoppel or Holding out:

Amjad would be regarded as partner by estoppel or holding out if:

he knowingly permitted himself to be represented as a partner in the firm by Kashif. Kalim on the faith of such representation extended credit to the firm. It does not matter whether Amjad does or does not know that the representation has reached Kalim. Therefore, in such case, Amjad would be liable for the outstanding amount to Kalim. However, Amjad would not be considered as holding out partner if he has denied Kashif's representation in public holding him as a partner in the firm or if he has no knowledge of Kashif's representation.

(b)

(i) Decision making:

Subject to contract between the partners, a partner can bind the firm by his actions. However, in case of differences, decision should be made by majority of the partners. Asghar cannot take decision without consultation with other partners. Every partner has a right to express his opinion before the matter is decided.

(ii) Liabilities of Partners towards third parties:

Every partner is liable jointly with all the other partners and also severally to third parties for all acts of the firm done while he is a partner.

A partner may not share in the business losses, yet his liability towards outsiders shall be unlimited.

If the partnership assets are insufficient to meet the firm's liabilities, Careem would have to repay the amount personally. However, Careem can recover the amount which he is called upon to pay to the creditors from Asghar and Babar.

September 2017: Q 4

(a) 'The sharing of profit is a prima facie evidence but not a conclusive test of partnership'.

Under the provisions of the Partnership Act, 1932 list the circumstances in which receipt by a person of a share of profits of a business does not of itself make him a partner with the persons carrying on the business. (03)

(b) On 1 July 2016 Abid, Rizwan and Salman started a partnership business and contributed Rs. 200,000 each towards the firm's capital. They also agreed to share profits in equal proportion. Abid, in addition to his capital

contribution, paid Rs. 100,000 to one of the suppliers as a security deposit. All the partners are entitled to interest at the rate of 8% on their capital. However, during the year, the firm incurred a loss of Rs. 80,000.

Under the provisions of the Partnership Act, 1932 state the amount of interest, if any, payable to each partner. (04)

(c) Wasim, Ahmed and Salman are partners in a firm. Salman died in a plane crash. Wasim and Ahmed agreed to admit Salman's minor son, Noman, to the benefits of the Partnership. Noman attained majority on 6 June 2016. He became aware of the fact that he had been admitted to the benefits of the Partnership on 16 July 2016. Being undecided about joining the firm as a partner, he preferred to wait for some time.

On 10 January 2017, the firm suffered heavy losses due to a fire in one of its factories. Wasim and Ahmed informed Noman that on account of losses, his entire capital has been wiped off and he is required to contribute Rs. 100,000 to enable the firm to settle its liabilities.

Under the provisions of the Partnership Act, 1932 analyse the above situation and advise whether Noman would be regarded as a partner in the firm. Also state his liabilities towards the losses, if any. (05)

Answer

(a) 'The sharing of profit is a prima facie evidence but not a conclusive test of partnership'.

Under the following circumstances the receipt by a person of a share of profits of a business does not of itself make him a partner with the persons carrying on the business:

where profit or payment is received:

- by a lender of money from persons engaged or about to engage in any business
- by a servant or agent as a remuneration
- by the widow or child of a deceased partner, as annuity
- by the previous owner or part owner of the business, as consideration for the sale of goodwill or share thereof
- by a transferee of a partner's interest
- by the persons holding a joint or a common interest in any property
- by the minor who is admitted to the benefits of existing partnership
- by a sub partner from a partner in the firm.

(b) **Interest to be received by each partner:**

Where a partner is entitled to interest on capital such interest is required to be paid only out of profits of the firm. During the year, since the firm has incurred a loss, all the partners are not entitled to receive any interest on their capital.

However, any partner making any payment, for the purpose of the business, beyond the amount of his capital contribution, is entitled to interest thereon at the rate of 6% per annum. Therefore, Abid is entitled to receive Rs. 6,000 on the amount paid as a security deposit.

(c) **Position of a minor on attaining majority**

Noman would only be considered a partner in the firm when either he gives public notice of becoming a partner, at any time within six months of the later of following dates:

- the date of his attaining majority; or
- the date of his obtaining knowledge that he had been admitted to the benefits of partnership; or

If Noman fails to give such notice he shall become a partner on the expiry of the above six months. i.e. 15 January 2017 in the given case.

Since up to 10 January 2017, when the firm suffered heavy losses, Noman's status in the firm had not been determined, i.e. whether he is or is not a partner in the firm, Noman would not be liable to pay additional Rs. 100,000 and would only be liable up to the extent of his share in the firm.

March 2018: Q 4

(a) Gul, Raza and Sami are partners in GRS Garments. Raza discovered that a supplier MP offers reasonable rates for consumables stores and put forth a resolution that MP should be included in the firm's list of suppliers. MP is owned by Gul and managed by his brother but Gul did not disclose this fact. When Raza and Sami became aware of the fact, they asked Gul to share with them the profits earned by MP on transactions with GRS.

Under the provisions of the Partnership Act, 1932 discuss whether Gul is bound to share the profits as demanded by Raza and Sami. (2.5)

(b) In 2014, Majid and Ebad started a business of sale and repair of vehicles under the name of ME Motors (MEM). Majid sold one of the vehicles which came for repair to Zahid for Rs. 1.0 million. Zahid on finding out that Majid did not have the legal title of the car sued MEM.

Under the provisions of the Partnership Act, 1932 discuss who would be liable for damages in the above situation. (2.5)

(c) X has been carrying on textile business for the past few years. He has recently met Y who is an expert in textile designing. X and Y have agreed that Y would advise X on various technical issues and use his contacts for the benefit of the business. Y would be entitled to 35% of the profits of the business. However, Y will not be required to bring any capital and will not take part in the day to day affairs of the business.

Under the provisions of the Partnership Act, 1932 analyse the above situation and advise whether partnership exists between X and Y. (05)

Answer

(a) Personal profits earned by partners

Gul has a duty to give full information to other partners, in relation to everything affecting the partnership. Subject to contract between the partners, if Gul had derived any profit for himself from any transactions with the firm then Gul shall account for that profit and pay it to the firm.

(b) Liability of the firm for wrongful acts of a partner

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. Further, in case a loss is sustained by a third party ME Motors (MEM) would be liable even for the wrongful acts of Majid. Therefore, Zahid can recover the amount from MEM or any of the partners. However, Majid shall indemnify MEM or Ebad for any loss caused to them by his fraud in the conduct of the firm's business.

(c) Mode of determining existence of partnership:

In determining whether X and Y are partners, regard shall be had to the real relationship between the partners, as shown by all the relevant facts taken together.

A partnership exists where following conditions are complied with:

- i. There is an agreement between two or more persons;
- ii. They run a business with the intention of sharing profits; and
- iii. The business is run by all, or by any one of them acting for all.

The Partnership Act, 1932 does not require that a partner must contribute money or capital in the partnership. Therefore, since both X and Y have a common interest in the same business in which they are sharing profit and have a mutual agency relationship between them, partnership does exist in the above situation unless it can be proved that the real relationship of being partners does not exist.

September 2018: Q 5

(a) Taqi, Saqib and Abrar are partners in a trading firm. By an agreement among themselves they decided that no partner shall have the authority to buy or sell goods beyond the limit of Rs. 20,000 without the consent of other partners. Ignorant of this restriction, Wajid sold goods worth Rs. 45,000 to Saqib who did not consult with the other partners. In view of the provisions of the Partnership Act, 1932 explain whether the firm and its partners are liable to Wajid under the above circumstances. (04)

(b) Bader and Yaseen established a distribution agency for supplying low cost medicines to hospitals. Yaseen, by way of a verbal agreement, allowed the agency to use his ancestral land for the business of the agency. Bader purchased a delivery van in his own name with partnership money. Bader wants to repay the amount to the partnership and therefore a receivable has been recorded in the partnership books. Under the provisions of the Partnership Act, 1932 describe whether the above assets would be considered to be the partnership property. (04)

(c) The sharing of profit is a prima facie evidence of partnership. Under the provisions of the Partnership Act, 1932 list any four circumstances in which a non-partner could benefit from the profits of a partnership. (02)

Answer

(a) Restriction of partner's implied authority

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 about the restriction. Under the given scenario, the firm and all the partners are jointly and severally liable to pay the entire amount to Wajid as he was unaware of any such restriction on partners authority.

(b) Partnership property:

Land provided by Yaseen: Subject to contract between the partners, the land would not be treated as the partnership property. It will become the partnership property only if the partners show an intention to make it so. But since Yaseen, by way of an agreement, brought the property only for the use of the partnership, the mere use of such land by the partnership would not make the land part of the partnership property.

Delivery van: In this case, van does not constitute partnership property because recording of receivable in partnership books shows that the van was not acquired for the partnership.

(c) Circumstances in which a non-partner could benefit from the profits of a partnership.

Following are the circumstances in which a non-partner could benefit from the profits of a partnership:

- (i) Lender of money to persons engaged or about to engage in any business
- (ii) Servant or agent as remuneration
- (iii) Widow or child of a deceased partner as annuity
- (iv) Transferee of a partner's interest
- (v) A minor who is admitted to the benefits of partnership
- (vi) Previous owner or part owner as consideration for the sale of goodwill or share thereof.

March 2019: Q 4

(a) Respond to the following scenarios, under the provisions of Partnership Act, 1932:

(i) Tehram, Rahil and Zain are partners in TRZ Associates. Zain, after obtaining mutual consent of all the partners, transferred his share of interest to Hatim. Hatim now wants to discuss the future business strategy of the firm with Tehram and Rahil. In this regard, he has asked the partners to provide him the firm's cash flow forecast so that he can determine firm's growth potential for the next five years. Comment on Hatim's entitlement to do the same. (03)

(ii) Sahir and Sarim are lawyers who have entered into a partnership namely SS Associates. Noreen approached SS Associates for a property dispute case. However, after seeing Sarim's capabilities, Noreen gave Rs. 250,000 to Sarim for investment in stocks and bonds at his discretion on her behalf. Sarim hid the said fact from Sahir and used the money to meet his personal needs. Subsequently, Noreen filed a suit on the firm for the recovery of Rs. 250,000. Reason out the validity of suit filed by Noreen. (02)

(iii) Faizan and Mehran are partners in a trading firm and have decided that no partner shall have the right to buy or sell goods beyond the value of Rs. 100,000 without consent of the other partner. Due to a sudden crisis in the market, prices of a product started falling sharply. Faizan without consulting Mehran sold all the perishable stock worth Rs. 950,000 in order to restrict the firm's loss. Can Mehran hold Faizan responsible for misconduct? (02)

(b) Define principle of 'holding out' under the Partnership Act, 1932 and state its exception, if any. (03)

Answer

(a)

(i) A transfer by a partner of his interest in the firm does not entitle Hatim to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles Hatim only to receive the share of profits of Zain, and Hatim shall accept the account of profits agreed to by the partners.

(ii) The firm cannot be made liable since the receiving of money by Sarim for investment purposes is not in ordinary course of a lawyer's business and accordingly, is beyond the scope of his implied authority as a partner.

(iii) A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm. Hence, Faizan cannot be held responsible for misconduct.

(b) Holding out partner

Anyone, who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Exceptions of holding out partner

After a partner's death if the business of the firm is continued in the old firm's name, the continued use of that name or of the deceased partner will not itself make legal representatives of the deceased partner liable for any act of the firm done after his death.

September 2019: Q 4

(a) Under the provisions of the Partnership Act, 1932 state the mandatory duties of partners which cannot be modified by an agreement amongst them. (03)

(b) Masoom, Rahul and Naila are partners in a trading firm. In 2016, they borrowed Rs. 500,000 from Ishtiaq for purchasing a shop in Multan. The loan was agreed to be repaid in two years' time. However, due to financial crises the loan could not be re-paid in time. For the purpose of settling the loan, Ishtiaq has offered Naila to admit his seventeen-year-old son Muneer to the partnership business.

Under the provisions of the Partnership Act, 1932 discuss whether Muneer can be admitted to the partnership business. State Muneer's rights and liabilities if he is so admitted. (04)

(c) Aftab, Rehan and Bali were partners in a law firm. The partnership deed, among other things, provided that the profits or losses of the firm would be shared equally among the partners. The firm continued its business for many years with Aftab receiving fifty percent share in the net profit and Rehan and Bali each sharing twenty-five percent of the net profit. Rehan and Bali never objected to this arrangement. Later on, partners developed some differences and Rehan and Bali filed a suit against Aftab for the recovery of their share in profits on the basis of partnership deed.

Under the provisions of the Partnership Act, 1932 discuss whether Aftab would succeed in defending the suit filed against him by Rehan and Bali. (03)

Answer

(a) Mandatory duties of partners

Following are the mandatory duties of a partner that cannot be changed by an agreement amongst the partners:

- Duty to be just and faithful.
- Duty to carry on business to the greatest common advantage.
- Duty to render true accounts.
- Duty to provide full information.
- Duty to indemnify for loss caused by fraud.
- Duty to be liable jointly and severally - unlimited liability.
- Duty to act within authority.
- Duty in case of emergency.

(b) Minor's admission to the benefits of partnership:

Partnership is created by a valid contract. Since a minor is not capable of entering into a contract, a contract by or with a minor is void ab-initio. Accordingly, Muneer cannot be a partner in the firm.

However, Munir can be admitted to the benefits of partnership but with the consent of all partners and not by Naila only.

The rights and liabilities of Munir before attaining majority are as follows:

Rights:

- right to share property and profits of the firm as agreed by the partners.
- right to have access to accounts of the firm and not to the secret books of the firm.
- right not to be adjudged insolvent

(ii) Liabilities:

- Personally not liable i.e limited liability.
- His share is liable for the acts of the firm.

(c) Determination of rights and duties of partners by contract between them:

The contract between the partners may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

In view of above, the suit filed by Rehan and Bali against Aftab is not maintainable because by accepting profits for the past many years in a ratio different from the agreed ratio they have impliedly consented to the variation in the contract. i.e. partnership deed.

March 2020: Q 4

(a) Respond to the following independent scenarios, under the provisions of the Partnership Act, 1932:

- (i) Moiz, Adeeb and Mumtaz were partners in a firm. Adeeb died. Moiz and Mumtaz continued the business and agreed to give 10% share of profits of business to the widow of Adeeb as annuity. Discuss whether Adeeb's widow would be deemed to be a partner in the firm. (02)
- (ii) Saima, Ahsan and Bari are partners in a law firm. Bari received an advance of Rs. 150,000 from one of firm's clients for defending a law suit. Bari, without proceeding on client's request and informing other partners about the receipt of the amount, utilised the money for personal use. Discuss the rights and liabilities of partners and that of the firm with regard to Bari's act. (06)

(b) Under the provisions of the Partnership Act, 1932 list down any four restrictions imposed on the implied authority of a partner. (04)

Answer

(a) (i) Existence of partnership:

No, Adeeb's widow is not a partner in the firm. The receipt by a person of a share of the profits of a business, is a prima facie evidence of the existence of partnership.

However, the receipt by the widow of a deceased partner, as annuity, does not of itself make the receiver a partner with the persons carrying on the business. In determining whether Adeeb's widow is a partner in the firm regard shall be had to the presence of mutual agency relationship among Moiz, Mumtaz and Adeeb's widow, which is a conclusive evidence, of the presence of partnership, and which in this case does not exist.

(ii) Mutual rights and liabilities of partners and the firm:

Bari has clearly exceeded his authority. However, Saima and Ahsan cannot repudiate Bari's transaction with the client. Bari's act of receiving Rs. 150,000 from the client, for defending them against a law suit, was done to carry on, in the usual way, business of the kind carried on by the firm and such act binds the firm.

Further, where a partner acting within his apparent authority receives money from a third party and misapplies it, the firm is liable to make good the loss. As a result, each of the partners is jointly and severally liable to the client for all the acts of the firm done while they are the partners.

Similarly, where by the wrongful act or omission of Bari (not defending the client against the law suit), a loss or injury is caused to the client or any penalty is incurred, the firm is liable to the same extent as the partners are liable.

However, Bari would be personally liable to the other partners for Rs. 150,000 and shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

Further consequence of his breach of duty not to act in any way prejudicial to the partnership business; the partnership could be wound up.

b) Restrictions imposed on the implied authority of a partner:

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

- (i) submit a dispute relating to the business of the firm to arbitration,
- (ii) open a banking account on behalf of the firm in his own name,
- (iii) compromise or relinquish any claim or portion of a claim by the firm,
- (iv) withdraw a suit or proceeding filed on behalf of the firm,

September 2020: Q 5

(a) Under the provisions of the Partnership Act, 1932 what are the general duties of a partner which cannot be altered by an agreement amongst themselves? (3)

(b) Saeed, Mona and Burhan are engaged in a partnership business. On 26 March 2019, they admitted Laila, on her seventeenth birthday, to the benefits of partnership. Laila is Mona's niece. On 20 April 2020, Laila became aware of her admittance to the benefits of partnership. On acquiring the knowledge, she immediately gave notice to Saeed, Mona and Burhan that she intends to be their partner.

Under the provisions of the Partnership Act, 1932 discuss whether Laila would be regarded as a partner in the firm with effect from the date of her notice. i.e. 20 April 2020. Also describe Laila's liability with regard to firm's debts once she becomes a partner. (4)

Answer

(a)

General duties of partners:

Following are the mandatory duties of a partner that cannot be changed by an agreement amongst the partners:

- (i) Duty to be just and faithful.
- (ii) Duty to carry on business to the greatest common advantage.
- (iii) Duty to render true accounts.
- (iv) Duty to provide full information.
- (v) Duty to indemnify for loss caused by fraud.
- (vi) Duty to be liable jointly and severally – unlimited liability.
- (vii) Duty to act within authority.
- (viii) Duty in case of emergency.

(b)

Admittance of minor as a partner:

By giving notice of her willingness to be a partner in the firm to the existing partners, Laila would not become a partner in the firm. In order to be a partner, Laila may give a public notice that she has elected to become a partner in the firm and such notice may be given at any time within six months of her attaining majority i.e. up to 26 September 2020, or her obtaining knowledge that she has been admitted to the benefits of partnership i.e. 20 October 2020, whichever date is

later. And such public notice shall determine her position as regards the firm. If Laila fails to give public notice till 20 October 2020, she will become a partner in the firm on the expiry of the said six months.

Laila's liability with regard to firm's debts:

Laila would be personally liable to third parties for all debts of the firm from the date she was admitted to the benefits of partnership i.e. 26 March 2019.

CHAPTER NO. 10

NEGOTIABLE INSTRUMENTS, ACT 1881

September 2014: Q 5

(a) What do you understand by the terms 'Holder', 'Holder in due course' and 'Payment in due course' under the Negotiable Instruments Act, 1881? (08)

Answer

(a) **Holder**

A person is called holder of a negotiable instrument if he satisfies the following two conditions:

He must be entitled to the possession of the instrument in his own name and

He must be entitled to receive / recover the amount due on the instrument from the parties liable under the instrument

Thus a holder is a bearer of the bearer instrument and the endorsee or payee of the order instrument.

Explanation:

Where the note, bill or cheque is lost and not found again, or is destroyed, the person in possession of it or the bearer thereof at the time of such loss or destruction shall be deemed to continue to be its holder.

Holder in due course

Holder in due course means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

Explanation:

The title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon.

Payment in due course

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

March 2015: Q 5

(a) Under the provisions of the Negotiable Instruments Act, 1881 identify the person(s) who may cross the cheque after its issue and the manner in which it may be crossed. (05)

Answer

(a) **Crossing after issue:**

Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

September 2015: Q 5

Date: September 12, 2015	
Rs. 100,000/- only	
Please pay on demand to Tauseef or to his order the sum of Rupees One Hundred Thousand only, value received.	
To	Sd/- _____
Laila	Accepted
Busy Road	Laila
Karachi	Karachi

(a) Identify the type of above negotiable instrument and briefly describe its essential characteristics under the provisions of the Negotiable Instruments Act, 1881. (07)

Answer

(a) **Bill of Exchange:**

The above negotiable instrument is a bill of exchange.

Essential characteristics of a bill of exchange:

Following are the essential characteristics of a bill of exchange:

In writing: A bill of exchange is required to be in writing.

Order to pay: The drawer orders the drawee to pay money to the payee. Mere request does not constitute an order.

Definite and unconditional: The order to pay should not depend upon a condition or upon the happening of an uncertain event.

Signed by drawer: The instrument must be signed by the maker (drawer) and accepted by the drawee.

Certain parties: All the parties must be certain i.e. indicated in a bill of exchange with reasonable certainty.

Sum payable must be legal tender: The order must be to pay money and money only.

Sum Payable must be certain: It is essential that sum of money ordered to be payable must be certain and definite. However, it may include future interest or return in any other form or is payable at an indicated rate of exchange, or is payable at the current rate of exchange or the sum payable being subject to adjustment for profit or loss of the business of the maker.

Time for payment: The time for payment may be on demand or at a fixed or determinable future time.

It must be delivered: A bill of exchange is incomplete until it is delivered to the payee

March 2016: Q 5

(a) Under the provisions of the Negotiable Instruments Act, 1881 briefly describe the terms 'Negotiation' and 'Indorsement'. (04)

(b) Sarwar owes Rs. 500,000 to Zain. The amount is payable on 11 August 2016. Sarwar intends to issue a negotiable instrument to Zain in satisfaction of her debt.

Under the provisions of the Negotiable Instruments Act, 1881 advise Sarwat about the type of negotiable instrument which may be issued to Zain, assuming that Sarwat does not want to involve a third party in making the payment. Also prepare a draft of the said instrument. (04)

(You may make assumptions wherever you consider necessary)

(c) Under the provisions of the Negotiable Instruments Act, 1881 describe the purpose of crossing a cheque. Also state whether a cheque can be crossed specially more than once. (02)

Answer

(a)

Negotiation:

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder of it, the instrument is said to be negotiated.

Indorsement:

When the maker or holder of a negotiable instrument signs the same, otherwise than as maker, for the purpose of negotiation on the back or face of it or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument he is said to indorse the same and is called the endorser.

(b) Sarwat would issue the following promissory note to Zain.

Draft of the promissory note

Rs. 500,000/- only	Date: March 12, 2016
Five months after date, I promise to pay Zain or to his order the sum of Rupees Five Hundred Thousand, for value received.	
To Zain ABC Road Karachi	Sd/_____ Sarwat NewTown Karachi

(c) Purpose of crossing a cheque:

The purpose of crossing a cheque is to direct the drawee (banker) to pay the amount of the cheque only to a banker so that the party who receives the payment can easily be traced.

Can a Cheque be Crossed Specially more than Once:

Yes. It is allowed when a banker in whose favour a crossing is made, once again crosses it specially in favour of his agent (another banker) for collection.

September 2016: Q 5

(a) Under the provisions of the Negotiable Instruments Act, 1881 describe the following: (05)

- Acceptor for honour

Answer

(a) (i) **Acceptor for honour:**

When a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it supra protest for honour of the drawer or of any one of the endorsers, such person is called an acceptor for honour.

March 2017: Q 5

(a) What do you understand by the term 'Drawee in case of need' under the provisions of the Negotiable Instruments Act, 1881? (02)

(b) Aamna has received a bearer cheque from her uncle Shoaib as a gift. Shoaib's title to the cheque was defective and Aamna after receiving the cheque indorsed it to her landlord on account of rent. Under the Negotiable Instruments Act, 1881 explain whether the landlord would be able to recover the amount of the cheque. (03)

Answer

(a) **Drawee in case of need:**

The person whose name is given in addition to the drawee to be referred in case of need.
The name is given:

By the drawer while drawing the bill
By the endorser while indorsing the bill.

(b) **Holder in due course**

If the landlord has no knowledge of the defects in title of the previous holders of the cheque, he would be regarded as holder in due course as he has received the cheque against consideration (rent).

Therefore, he is entitled to recover the amount of the cheque. However, if the landlord was aware of the defective title of the holder from whom he derived his own title, then he would not be considered as holder in due course and he would not be able to recover the amount of the cheque.

March 2018: Q 5

Under the provisions of the Negotiable Instruments Act, 1881 briefly explain:

(a) the term 'endorsement'. (03)

Answer

(a) **Endorsement**

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument such act is called endorsement.

September 2018: Q 3

(a) In view of the provisions of the Negotiable Instruments Act, 1881 comment on the type and validity of each of the following instruments signed by Rahul:

- i. Nauman please pay to Mahreen Rs. 100,000.
- ii. Nauman, I shall be highly obliged if you make it convenient to pay Rs. 100,000 to Marhreen.
- iii. I acknowledge myself to be indebted to Nauman in Rs. 100,000 to be paid on demand, for value received.
- iv. I promise to pay Mahreen or order Rs. 100,000 six days after Nauman's death. (04)

(b) Under the provisions of the Negotiable Instruments Act, 1881 discuss the effect(s) of the words 'Not negotiable' on a cheque crossed specially. (03)

Answer

(a) Essential elements of bills of exchange and promissory note

(i) It is a valid bill of exchange as it contains an unconditional order to pay.

(ii) It is in the nature of bill of exchange but it is not a valid bill of exchange as it contains only request to pay and not an order to pay.

(iii) It is a valid promissory note containing all the essential elements.

(iv) It is a valid promissory note. It is not considered to be conditional, for it is certain that Nauman will die, though the exact time of his death is uncertain.

(b) Effect(s) of the words 'Not Negotiable' on a cheque crossed specially

The effect of the words 'not negotiable' on a crossed cheque is that the title of the transferee of such a cheque cannot be better than that of transferor. The addition of the words not negotiable does not restrict the further transferability of the cheque. It only takes away the main feature of negotiability, which is transferability free from defects.

March 2019: Q 2

(a) Under the provisions of Negotiable Instruments Act, 1881 define 'Holder in due course' and 'Acceptor for honour'. (05)

Answer

a) Holder in due course - means any person who for consideration becomes the possessor (holder) of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

Acceptor for honour - when a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the endorsers, such person is called an "acceptor for honour."

September 2019: Q 5

(a) Respond to the following independent situations, under the provisions of the Negotiable Instruments Act, 1881:

(ii) Samad drew a cheque which was payable to 'Munaf or order'. Saleem after forging Munaf's endorsement on the cheque received payment from the banker. Discuss whether the banker would be liable on the cheque to Samad. (02)

(b) Under the provisions of the Negotiable Instruments Act, 1881 briefly describe:

(ii) Payment in due course (02)

Answer

(a) (ii) **Payment in due course of crossed cheque:**

The banker in this case would not be liable to Samad and can debit Samad's account with the amount of the cheque provided the payment was made in due course without negligence and in accordance with the apparent tenor of the cheque. The banker is not expected to verify the signatures of the payees and the endorsees in an order cheque. The banker would only be liable to Samad if he can prove that payment was not made in due course.

(b) (ii) Payment in due course

Means payment in accordance with the apparent tenure of the instrument in good faith and without negligence to any person in possession of it. Apparent tenure means the period of time as expressed in the instrument, after which it is payable.

Payment in due course, which results in discharge of a negotiable instrument, must fulfill the following conditions.

The payment must be in accordance with the apparent tenure of the instrument.

The payment must be made in good faith and without negligence.

The payment must be made to a person in possession of the instrument

The payment must be made in money only

March 2020: Q 5

(c) Sultan drew a bill of exchange on Amjad and made it payable to Bukhari or order. On maturity another person of the same name wrongfully acquired possession of the bill and presented it to Amjad for payment. Amjad after making due inquiry and being satisfied that the presenter is Bukhari, made payment on the bill.

Under the provisions of the Negotiable Instruments Act, 1881 discuss whether Amjad is discharged from his liability. (02)

Answer

(c) Payment in due course:

Yes, Amjad is discharged from his liability on the bill.

Amjad made payment to the presenter, who was in possession of the bill, according to the apparent tenor of the instrument, in good faith and without negligence, after making due inquiry as to his identity.

It is therefore, a payment in due course and the acceptor is discharged.

September 2020: Q 6

(a) Under the provisions of the Negotiable Instruments Act, 1881 what would be the effect(s) of the words 'Not negotiable' on a cheque crossed generally? (3)

(b) Mujahid bought readymade garments worth Rs. 600,000 from Shoaib on credit. The amount is payable on 25 December 2020. Mujahid wants to issue a negotiable instrument in satisfaction of his debt to Shoaib without involving a third party for the payment.

Under the provisions of the Negotiable Instruments Act, 1881 identify the type of negotiable instrument which Mujahid may issue to Shoaib in satisfaction of his debt. Also prepare a draft of the said instrument. (4)

(You may assume necessary details for the preparation of the negotiable instrument)

Answer

(a) Effect(s) of the words 'Not negotiable' on a cheque crossed generally

The effect of the words "not negotiable" on a crossed cheque is that the title of the transferee of such a cheque cannot be better than that of its transferor. The addition of the words not negotiable does not restrict the further transferability of the cheque. It only takes away the main feature of negotiability, which is transferability, free from defects.

- (b) Mujahid would issue a promissory note as time instrument to Shoaib in satisfaction of his debt.

Draft of the promissory note

Rs. 600,000/- only		Date: September 26, 2020
Three months after date I promise to pay Shoaib or to his order the sum of Rupees Six Hundred Thousand, for value received.		
To	Sd/- _____	
Shoaib	Mujahid	
XYZ Street	Down Town	
Karachi	Karachi	

CHAPTER NO. 11

INTRODUCTION TO COMPANY AND INCORPORATION PROCESS

March 2016: Q 6

(a) Organizations working for useful objects of the society often need protection of limited liability for such work.' However, there are certain conditions subject to the fulfillment of which an exemption may be granted to an entity from using the word 'Limited' to its name. Describe those conditions and also specify the authority who may grant such exemption under the Companies Act, 2017. (04)

September 2017: Q 6

(b) Zeta Associates (ZA) intends to register as a limited liability company without adding the word 'Limited' to its name.

Under the provisions of the Companies Act, 2017 list the conditions which ZA must satisfy for dispensing with the requirement of using 'Limited' to its name. (04)

Answer

Associations not for profit:

If the Securities and Exchange Commission of Pakistan is satisfied that an association is formed as a limited company without the addition of word 'Limited' or (Guarantee) Limited or (Private) Limited etc. to its name, subject to the following:

(a) for promoting commerce, art, science, religion, health, education, research, sports, protection of environment, social welfare, charity or any other useful object;

(b) such company—

(i) intends to apply the company's profits and other income in promoting its objects; and

(ii) prohibits the payment of dividends to the company's members; and

(c) such company's objects and activities are not and shall not, at any time, be against the laws, public order, security, sovereignty and national interests of Pakistan.

September 2016: Q 6

(b) Under the provisions of the Companies Act, 2017 briefly describe the term 'Body Corporate'. (02)

March 2018: Q6b

(b) Under the provisions of the Companies Act, 2017 explain the term 'body corporate or corporation'. (04)

Answer

(b) Body corporate:

Body corporate or corporation includes:

(a) a company incorporated under the Act or company law; or

(b) a company incorporated outside Pakistan, or

(c) a statutory body declared as body corporate in the relevant statute,

but does not include:

(i) a co-operative society registered under any law relating to cooperative societies; or

(ii) any other entity, not being a company as defined in this Act or any other law for the time being which the concerned Minister-in-Charge of the Federal Government may, by notification, specify in this behalf.

March 2019: Q 9

(a) Masters Limited (ML) has made equity investment in Abbas Limited (AL). In the light of Companies Act, 2017 state under what circumstances ML may classify AL as its subsidiary. (4)

Answer

a) AL may be considered as a subsidiary company of ML if:

ML controls composition of the board of AL. The composition shall be deemed to be controlled by ML if it can appoint or remove all or a majority of AL's directors; or ML exercises or controls more than one-half of its voting securities either by itself or together with one or more of its subsidiary companies.

March 2020: Q 7

(a) The licence of Cancer Research Association (CRA), issued under section 42 of the Companies Act, 2017, was revoked by the Commission as the affairs of CRA were conducted in a manner prejudicial to public interest.

Under the Companies Act, 2017 briefly discuss the effect of revocation of license on CRA, its members and officers. (05)

Answer

(a) Effect of revocation of licence

On revocation of licence of CRA issued under section 42, by the Commission:

(i) the company shall stop all its activities except the recovery of money owed to it, if any;

(ii) the company shall not solicit or receive donations from any source; and

(iii) all the assets of the company after satisfaction of all debts and liabilities shall be transferred to another company licensed under section 42, preferably having similar or identical objects to those of the company, within ninety days from the revocation of the licence or such extended period as may be allowed by the Commission:

Provided that a reasonable amount to meet the expenses of voluntary winding up or making an application to the registrar for striking the name of the company off the register may be retained by the company.

(iv) The members and officers of the first mentioned company (whose assets have been transferred) or any of their family members shall not be eligible to hold any office in the later company (the company to whom such assets have been transferred) for a period of five years from the date of transfer of such assets.

CHAPTER NO. 12

MEMORANDUM & ARTICLES

September 2014: Q 6

(a) Under the provisions of the Companies Act, 2017 a company, without prior approval of the Commission, cannot be registered by a name which contains certain words or phrases suggesting certain attributes/affiliations. List those attributes/ affiliations. (04)

Answer

(a) Names requiring prior approval of Commission

Except with prior approval in writing of the Commission, no company shall be registered by a name which contains any word suggesting or calculated to suggest—

- (a) the patronage of any past or present Pakistani or foreign head of state;
- (b) any connection with the Federal Government or a Provincial Government or any department or authority or statutory body of any such Government;
- (c) any connection with any corporation set up by or under any Federal or Provincial law;
- (d) the patronage of, or any connection with any foreign Government or any international Organisation;
- (e) establishing a *modaraba* management company or to float a *modaraba*; or
- (f) any other business requiring licence from the Commission.

September 2014: Q 8

(a) Mazboot Limited (ML) is a newly incorporated company. ML has issued a prospectus inviting offers from the general public for subscription to its shares and is also intending to sign a musharika finance facility agreement with Top Bank Limited. However, Mr. Baqir, who is the legal advisor of the company, is against the signing of musharika finance facility agreement.

In view of the provisions of the Companies Act, 2017 explain why ML should not sign the finance facility agreement. List the condition(s), if any, which ML must comply before exercising its borrowing powers. Also state the consequences if ML signs the musharika finance facility without fulfilling the above condition(s). (07)

Answer

(a) Why ML should not sign the finance facility agreement.

ML should not sign the musharika finance facility agreement before fulfilling certain conditions (referred below). However, any contract made by ML after fulfilling certain conditions but before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

Conditions which ML must comply before exercising its borrowing powers:

ML shall not exercise any borrowing powers unless:

shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

every director of ML has paid to the company full amount on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash;

no money is or may become liable to be repaid to applicants for any shares which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares to be dealt in on any stock exchange;

there has been filed with the registrar a duly verified declaration by the chief executive or one of the directors and the secretary in the prescribed form that the aforesaid conditions have been complied with and the registrar has issued a certificate to commence business;

If ML exercises borrowing powers in contravention of the above, every officer and other person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding one thousand rupees for every day during which the contravention continues.

September 2015: Q 7

(a) What is meant by the term 'Member' as described under the provisions of the Companies Act, 2017? (04)

September 2019: Q

(a) Under the provisions of the Companies Act, 2017 discuss how a person may become a member of the company. (03)

Answer

(a) **Member**

The subscribers to the memorandum of association are deemed to have agreed to become members of the company and become members on its registration and every other person-

(a) to whom is allotted, or who becomes the holder of any class or kind of shares; or

(b) in relation to a company not having a share capital, any person who has agreed to become a member of the company;

and whose names are entered; in the register of members, are members of the company.

September 2015: Q 7

(b) Paband Limited is in the process of incorporation and has filed an application with the registrar's office for registration of its memorandum of association. However, the registrar has refused to register the memorandum.

Under the provisions of the Companies Act, 2017 state the possible reasons for such refusal. Also advise the options available to Paband Limited in the above circumstances. (06)

September 2017: Q 6

(a) Malik and Azad, being the promoters of Masoom Limited, are in the process of preparation of memorandum of association for filing with the registrar.

Under the provisions of the Companies Act, 2017 advise them about the conditions required to be fulfilled for registering the memorandum. Also state the remedies available to them, if for any reason, the registration is refused. (05)

Answer

(b) **Registration of memorandum of association:**

Company shall file with the registrar an application on the specified form containing the following information and documents for incorporation of a company, namely:

(a) a declaration on the specified form, by an authorized intermediary or by a person named in the articles as a director, of compliance with all or any of the requirements of this Act and the rules and regulations made there under in respect of registration and matters precedent or incidental thereto;

(b) memorandum of association of the proposed company signed by all subscribers, duly witnessed and dated;

(c) there may, in the case of a company limited by shares and there shall, in the case of a company limited by guarantee or an unlimited company, be the articles of association signed by the subscribers duly witnessed and dated; and

(d) an address for correspondence till its registered office is established and notified.

If registrar is of the opinion that any document or information filed with him in connection with the incorporation of the company contains any matter contrary to law or does not otherwise comply with the requirements of law or is not complete owing to any defect, error or omission or is not properly authenticated, the registrar may either require the company to file a revised document or remove the defects or deficiencies within the specified period.

If company fails to remove the deficiencies conveyed within the specified period, the registrar may refuse registration of the company.

Options available to Company:

If registration of the memorandum is refused:

Company may file a revised document or remove the defects or deficiencies required by registrar within the specified period, or

The subscribers of the memorandum may, within thirty days of the order of refusal, prefer an appeal to the Commission. An order of the Commission shall be final and shall not be called in question before any court or other authority.

March 2016: Q 6

(b) The Directors of Muntaqil Limited are considering to re-locate company's registered office from Karachi to Islamabad to carry on business more economically.

Advise Company Secretary about the steps which must be taken to re-locate the registered office under the provisions of the Companies Act, 2017. (06)

Answer

(b) Alteration in registered office clause

For re-location of company's registered office from Karachi to Islamabad, Muntaqil Limited has to alter the registered office clause of its memorandum, Muntaqil Limited shall take following steps:

- i. Passing of special resolution to alter the provisions of its memorandum.
- ii. Filing of petition to the Commission for confirmation and passing of order.
- iii. Copy of the order of Commission forwarded to the company and registrar within 7 days of the date of order.
- iv. Filing of altered copy of memorandum with the registrar as per order of Commission within 30 days of the date of order.
- v. Registrar shall register the altered memorandum and issue a certificate.
- vi. physical record of the company shall be transferred to the registrar Islamabad.
- vii. Intimation to registrar within 15 days after actual shifting of registered office from Karachi to Islamabad.

March 2017: Q 6

(a) Innovation Limited is a newly incorporated public limited company. Prior to the issuance of certificate of commencement of business, the directors have entered into a long-term contract with a foreign company for the supply of materials for use in production.

Under the provisions of the Companies Act, 2017 explain the following:

- (i) status of the long-term contract under the above circumstances. (02)
- (ii) requirements for obtaining the certificate of commencement of business. (05)

Answer

(a)

(i) Status of the contract - provisional contract

Any contract entered by Innovation Limited (IL) before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date, it shall become binding.

(ii) Requirement for obtaining certificate of commencement of business

IL has to comply with the following requirements for obtaining the certificate of commencement of business:

1. IL should have allotted shares against cash for an amount, which is not less than the amount of minimum subscription;
2. Directors of IL should have paid to the company full amount on each of the shares taken or contracted to be taken by them and for which they are liable to pay in cash;
3. If IL decides not to issue prospectus-inviting public to subscribe its shares, it shall have to file with the registrar a statement in lieu of prospectus.
4. If IL had issued a prospectus and could not get its shares listed on stock exchange, IL shall not be given a certificate of commencement of business until the date all money repayable on such a prospectus is paid by IL and unless statement in lieu of prospectus is filed by the company;
5. IL has to file with the registrar a duly verified declaration by the chief executive or one of the directors and the secretary in the prescribed form, that the aforesaid conditions have been complied with; and

March 2017: Q 10

(a) Shafiq and Rahat intend to establish a limited liability company in Lahore for the manufacture of edible oil.

Under the provisions of the Companies Act, 2017 advise them with regard to the following:

- i. factors to be considered while selecting the name of the Company. (02)
- ii. names which may require prior approval of the Commission. (04)

(b) The registrar, after registration of the memorandum of association, has issued the certificate of incorporation to Anjaan Limited.

Under the provisions of the Companies Act, 2017 briefly describe the effects of incorporation. (04)

Answer

(a) Following factors to be considered while selecting the name of the Company

i. Prohibition of certain names

No company shall be registered by a name which contains such word or expression, as may be notified by the Commission or in the opinion of the registrar is:

- (a) identical with or resemble or similar to the name of a company; or
- (b) inappropriate; or
- (c) undesirable; or
- (d) deceptive; or

- (e) designed to exploit or offend religious susceptibilities of the people; or
- (f) any other ground as may be specified.

ii. Names which require prior approval of Commission

Except with prior approval in writing of the Commission, no company shall be registered by a name which contains any word suggesting or calculated to suggest:

- (a) the patronage of any past or present Pakistani or foreign head of state;
- (b) any connection with the Federal Government or a Provincial Government or any department or authority or statutory body of any such Government;
- (c) any connection with any corporation set up by or under any Federal or Provincial law;
- (d) the patronage of, or any connection with, any foreign Government or any international organisation;
- (e) establishing a modaraba management company or to float a modaraba; or
- (f) any other business requiring licence from the Commission.

(b) Effects of incorporation:

The registration of the company has the following effects, as from the date of incorporation:

- (a) the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation;
- (b) the body corporate is capable of exercising all the functions of an incorporated company, having perpetual succession and a common seal;
- (c) the status and registered office of the company are as stated in, or in connection with, the application for registration;
- (d) in case of a company having share capital, the subscribers to the memorandum become holders of the initial shares; and
- (e) the persons named in the articles of association as proposed directors, are deemed to have been appointed to that office.

March 2018: Q 6

- (a) Printing (Pvt.) Limited (PL) wants to change its name to Printing and Marketing (Pvt.) Limited.

Under the provisions of the Companies Act, 2017 describe the steps to be followed by PL for changing its name and matters to be complied with after the change of name. (05)

Answer

(a) Change of name by a company

The steps required for change of names are as follows:

Pass special resolution and obtain written permission of the registrar for new name

Obtain certificate of incorporation bearing the new name

After the change of its name, PL shall for a period of ninety days from the date of issue of a certificate by the registrar continue to mention its former name along with its new name on the outside of every office or place in which its business is carried on and in every document or notice.

The change of name shall not affect any legal proceedings that might have commenced by or against PL under its former name. It would also not affect the rights and obligations of PL.

March 2019: Q 9

(b) Describe the provisions contained in the Companies Act, 2017 relating to 'principal line of business' of a company. (5)

Answer

b) Principal line of business

Principal line of business means the business in which substantial assets are held or likely to be held or substantial revenue is earned or likely to be earned by a company, whichever is higher. Principal line of business of the company shall be mentioned in the memorandum of association of the company which shall always commensurate with name of the company. Any change in the principal line of business shall be reported to the registrar within thirty days from the date of change, on the form as may be specified and registrar may give direction of change of name if the name does not commensurate with the principle line of business of the company.

September 2019: Q 6

(b) The Registrar, after registering the memorandum and articles of association, has issued the certificate of incorporation to Shahbaz Limited, a company with an authorized share capital of Rs. 300 million.

Under the Companies Act, 2017 briefly describe the effects of such registration. (05)

Answer

(b) Effect of registration of memorandum

The registration of Shahbaz Limited has the following effects, as from the date of incorporation:

(a) the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation;

(b) the body corporate is capable of exercising all the functions of an incorporated company, having perpetual succession and a common seal;

(c) the status and registered office of the company are as stated in, or in connection with, the application for registration;

(d) in case of a company having share capital, the subscribers to the memorandum become holders of the initial shares; and

(e) the persons named in the articles of association as proposed directors, are deemed to have been appointed to that office.

September 2019: Q 9

Under the provisions of the Companies Act, 2017 briefly explain the exception(s) to the following general rules:

(c) Companies can commence the business only after obtaining certificate of commencement of business from the registrar. (02)

Answer

(c) Following companies are not required to obtain certificate of commencement of business from registrar:

(a) A private limited company

(b) A company converted from private to a public

(c) to a company limited by guarantee and not having a share capital

March 2020: Q 6

A team of young engineers is planning to incorporate a private limited company which would provide machine maintenance services to large companies. The company would initially be incorporated with a share capital of Rs. 20 million.

(a) Registration and signing of articles of association.

Answer

(a) Registration of articles

□ The company limited by shares has the option to set out its own regulations for the company and get it registered with the memorandum of association, or adopt Table A as its Article of association.

□ If articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to the Companies Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

□ The article shall be signed by each subscriber, in the presence of a witness who shall attest the signature of the subscriber.

September 2020: Q 7

A group of persons intends to form a limited liability company, with the objective to provide research related services to pharmaceutical companies. In this respect, one of the promoters proposed 'Pharma Research Authority' as a name of the proposed company which was liked by all the promoters.

Under the provisions of the Companies Act, 2017 comment on the validity of the name proposed by the promoters and suggest how they can overcome the deficiencies, if any, in it. (6)

Answer

The name proposed by the promoters is not valid under the provisions of the Companies Act, 2017 due to following two reasons:

- (i) The word "Authority" cannot be used as it implies connection with a Government. According to the Companies Act, 2017 "no company shall be registered by a name which contains any word suggesting or calculated to suggest any connection with a Government."
However, in order to overcome this the promoters with the prior approval in writing of the Commission may be able to get the company registered with such word.
- (ii) The word "Limited" is missing from the name of the company. According to the Companies Act, 2017 the word limited is required to be written at the end of the name of a company.
However, if the group of persons intend to form a limited liability company with charitable and not for profit objects then they have to apply to the Commission for a licence and the Commission, if satisfied, may allow them to be registered as a limited liability company without addition of the word "Limited" to its name.

Moreover, it should also be ensured that the proposed name is not identical with or resemble or similar to the name of already registered company or inappropriate or deceptive.

CHAPTER NO. 13

MANAGEMENT

September 2014: Q 8

(b) Briefly describe the provisions relating to the restrictions imposed on directors' remuneration with regard to performing extra services, attendance of meeting, etc. as provided in the Companies Act, 2017. (03)

Answer

(b) Restrictions on director's remuneration:

The remuneration of a director for performing extra services, including the holding of the office of chairman, shall be determined by the directors or the company in general meeting in accordance with the provisions in the company's articles.

The remuneration to be paid to any director for attending the meetings of the directors or a committee of directors shall not exceed the scale approved by the company or the directors, as the case may be, in accordance with the provisions of the articles,

March 2015: Q 6

(a) Under the provisions of the Companies Act, 2017 briefly describe the following:

ii. chief executive in relation to a company (03)

Answer

(a)(ii) Chief executive

Chief executive, in relation to a company means an individual who, subject to the control and directions of the directors, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of the company, and includes a director or any other person occupying the position of a chief executive, by whatever name called, and whether under a contract of service or otherwise.

March 2015: Q 10

(b) Munafa Limited (ML) is engaged in the business of leasing vehicles to corporate customers. The Board of Directors of ML is considering to authorise one of its directors, Mr. Farigh, to enter into a contract with Mrs. Laiqa, the Managing Director of Taizraftar Limited, for the purchase of six delivery vans. Mrs. Laiqa is also the wife of Mr. Farigh.

Under the provisions of the Companies Act, 2017 analyse the above situation and advise Mr. Farigh about his responsibilities towards the company with respect to the above transaction. (05)

Answer

(b) Disclosure of directors' interest

Being a director, Mr. Farigh is an agent of the shareholders of the company and stands in a fiduciary relationship with them. So he is required to make all contracts and all transactions in good faith and in best interest of the company.

If a director makes any transaction or enters into any contract on behalf of the company in which he is interested by any means, he should give a complete disclosure of the nature of his interest.

In this case, Mr. Farigh is deemed to be indirectly interested in the transaction as his wife is the managing director in TL.

Therefore, Mr. Farigh should give a general notice to the effect to all other directors that he should be regarded as concerned or interested in the transaction to be entered into with TL and such notice shall be given:

-at the meeting of the directors at which the question of entering into the contract or arrangement is first to be taken into consideration.

-after disclosing his interest in the transaction, Mr. Farigh should not be part of the directors' meetings in which such contract or transaction is to be discussed.

September 2015: Q 6

(a) Azad Limited (AL) is a listed company engaged in the business of manufacturing and supply of electrical appliances. Mr. Majnou, a director of AL, has applied for an interest free loan from the company to be repayable in five years.

In view of the provisions of the Companies Act, 2017 describe the circumstances under which AL may grant loan to Mr. Majnou. (04)

Answer

(a) Loans to directors:

AL being manufacturing company cannot, directly or indirectly, grant any loan to its director, Mr. Majnou. However, the company may provide loan to Mr. Majnou subject to following conditions:

- Approval of company in general meeting
- Approval of Commission

March 2016: Q 8

(a) Tabdily (Pvt) Limited (TPL) has recently been converted into a public listed company and the directors intend to appoint a new Chief Executive of the company.

Under the provisions of the Companies Act, 2017 briefly explain the requirement(s) for the appointment of a Chief Executive. Also state the restrictions, if any, on the appointment of a Chief Executive. (04)

(b) One of the directors while retaining his directorship in TPL is contemplating to start his own business which is likely to take most of his time for the next few years.

Under the provisions of the Companies Act, 2017 the director is seeking your advice on the matters due to which he may ipso facto cease to hold office of the director of TPL. (06)

Answer

(a) Appointment of subsequent chief executive:

The requirements for the appointment of a Chief Executive are as under:

Within fourteen days from the date of election of directors under the Act or the office of the chief executive falling vacant, as the case may be, the directors of TPL shall appoint any person, including an elected director, to be the chief executive, but such appointment shall not be for a period exceeding three years from the date of appointment.

On the expiry of his term of office under the Act, a chief executive shall be eligible for reappointment. The chief executive retiring under the Act shall continue to perform his functions until his successor is appointed unless non-appointment of his successor is due to any fault on his part or his office is expressly terminated.

Restriction on appointment of chief executive:

No person who is ineligible to become a director of TPL under the Act shall be appointed or continue as the chief executive of TPL.

(b) Vacation of office by the directors:

The director shall ipso facto cease to hold office:

-if he or his spouse engages in the business of brokerage, or if he sponsors, or becomes a director or officer of a corporate brokerage house or loses fiduciary behaviour.

-if he absents himself from three consecutive meetings of the directors, without leave of absence from the directors;

-if he or any firm of which he is a partner or any private company of which he is a director, without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of chief executive or a legal or technical adviser or a banker; or accepts a loan or guarantee from the company in contravention of the provisions of the Act.

In addition to above, if TPL has provided any clause(s) in its Article to get the office of the director vacated, and the director becomes subject to such clause(s).

September 2016: Q 7

(b) Jamal, who has recently been appointed as a Chief Executive Officer of Alibaba (Pvt.) Limited (APL) has applied for financial assistance of Rs. 1.0 million to the Board of Directors of APL for buying shares in Mujahid Limited, a public company, holding 75% voting rights in APL.

Under the provisions of the Companies Act, 2017 explain whether APL may grant financial assistance to Jamal under the above circumstances. (04)

Answer

(b) Restriction on grant of financial assistance by the company for purchase of its own or its holding company's shares:

According to the provisions of the Companies Act, 2017 no company limited by shares, other than a private company, not being a subsidiary of a public company, is allowed to grant financial assistance of any sort, i.e. loan advance or credit etc., to any person for buying its shares or the shares of its holding company.

In view of the above provision, APL, being subsidiary of public company (Mujahid Limited) cannot grant financial assistance to Jamal its CEO.

However, under the following circumstances APL may grant financial assistance to its CEO, Jamal:

if he is a salaried employee and payment of such financial assistance is part of contract of service; and that he was not a director of the company prior to his appointment as a chief executive of the company.

September 2016: Q 8

(b) Golden Limited (GL), registered with a paid-up capital of Rs. 20,000,000 consisting of ordinary shares of Rs. 50 each, has decided to remove one of its elected directors Saleem due to poor performance. Saleem was elected on the board by securing 1,800,000 votes in a general meeting held on 1 January 2015. The least number of votes casted for electing a director in the meeting was 1,200,000. GL has seven directors on the board.

Under the provisions of the Companies Act, 2017 enumerate: (03)

- i. the number of votes required by Saleem to retain his directorship in GL.
- ii. what would be your answer in (i) above, if Saleem was elected to fill a casual vacancy on the board.

Answer

(b) **Removal of a director:**

i. GL may remove Saleem from his office by passing a resolution in a general meeting. In order for Saleem not to be removed from his office, he will have to secure at least 1,200,000 votes against the resolution which are the least number of votes secured by a director for election in the last election of directors.

ii. If Saleem was appointed to fill a casual vacancy on the board, he shall not be removed from his office if the number of votes casted against the resolution equals or exceeds the number of votes calculated as per the following formula:

$$\frac{\text{Number of directors for the term} \times \text{Number of shares}}{\text{Number of directors for the time being}} \\ \frac{7 \times 400,000}{7} \\ = 400,000$$

Therefore, Saleem would require at least 400,000 votes against the resolution to retain his directorship in GL.

March 2017: Q 6

(b) Saleem and Company, a partnership concern, is engaged in IT consulting business. The partners intend to convert the partnership into a private limited company in the name of Marhaba (Pvt.) Limited.

Under the provisions of the Companies Act, 2017 advise the partners with respect to the appointment of first directors of the company and the term for which they may be appointed. (03)

Answer

(b) First directors and their terms

Marhaba (Pvt.) Limited (ML) shall have not less than two directors;

The number of directors and the names of the first directors shall be determined by the subscribers of the memorandum and their particulars shall be submitted along with the documents for the incorporation of the company.

The number of first directors may be increased by appointing additional directors by the members in a general meeting. The first directors shall hold office until the election of directors in the first annual general meeting of the company.

September 2017: Q 8

(a) Disneyland Limited is considering purchase of a new production house which is currently owned by Marvels (Private) Limited. The Board of Directors of Disneyland Limited is considering to give responsibility of negotiation and finalization of the deal to two of its Directors, Moiz and Kareem. However, Naghma the wife of Moiz and their 15 year old son Riaz jointly hold 15% shares of Marvels (Private) Limited.

In the light of Companies Act, 2017 discuss the duties and responsibilities of Moiz under the above circumstances. (04)

Answer

(a) Duties and responsibilities of interested directors:

Being a director, Moiz is an agent of the shareholders of the company and stands in a fiduciary relationship with them. So he is required to make all contracts and all transactions in good faith and in best interest of the company. In this case, Moiz is deemed to be indirectly interested in the transaction as his wife and son (relatives) jointly own 15% shares of Marvels (Private) Limited (MPL). If a director makes any transaction or enters into any contract on behalf of the company in which he is interested by any means, he should give a complete disclosure of the nature of his interest. Therefore, Moiz should give a general notice to the effect to all other directors that he should be regarded as concerned or interested in the transaction to be entered into with MPL and such notice shall be given at the meeting of the directors at which the question of entering into the contract or arrangement is to be taken into consideration. After disclosing his interest in the transaction, Moiz should not be part of the directors meetings when such contract or transaction is to be discussed.

September 2017: Q 10

(b) Sunshine Limited, an unlisted company, had three directors A, B and C. After two and half years of their appointment, A died in a car crash. B and C are of the opinion that since the election of directors are due in six months time, there is no need to fill the casual vacancy.

Discuss the above situation in the light of the Companies Act, 2017. (02)

Answer

(b) **Casual vacancy:**

Sunshine Limited, an unlisted company, shall have a minimum of three directors at all times on the board. As due to the death of director A, a casual vacancy has occurred on the board, the existing directors are required to appoint a person to fill the casual vacancy and such person shall hold office for the remainder of the term of director A in whose place he is appointed.

March 2018: Q 8

(a) Under the provisions of the Companies Act, 2017 comment on each of the following independent situations:

ii. Zafar was recently appointed as a Director of HP Limited, a listed company. In March 2018 the board of directors came to know that Zafar had been declared a defaulter by the High Court. (02)

iii. Kalim is a director of Behaal Limited. On 1 October 2017 Kalim went abroad on a personal trip and returned back on 15 February 2018. He was unable to attend five board meetings which were held during this period. (02)

Answer

(a)

ii. Zafar will become ineligible from being a director only if he had defaulted in director.

iii. Kalim shall ipso facto cease to hold office if he was absent for at least three consecutive board meetings unless he has obtained leave of absence.

September 2018: Q 8

(a) The director of a company shall not take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in such contract or arrangement.

Under the provisions of the Companies Act, 2017 briefly describe the exceptions to the above rule, if any. (03)

Answer

(a) **Interested director not to participate or vote in proceedings of board:**

The above rule shall not be applicable under the following circumstances:

(i) If the person is a director of a private company which is neither a subsidiary nor a holding company of a public company;

(ii) when the director has acted as surety of the company and the resolution under consideration relates to the indemnification or insurance coverage of the surety director against any loss incurred by the director for becoming surety of the company.

September 2018: Q 9

(b) Baalbek Limited is an unlisted public company and has eight directors. Its paid-up capital is Rs. 50,000,000 divided into ordinary shares of Rs. 500 each. The directors have decided to remove Aga Kirmani from the board due to his dismal performance. Aga Kirmani was elected unopposed on the board.

In the light of the provisions of the Companies Act, 2017 briefly describe how Aga Kirmani can be removed from the board. (02)

(c) Faraya Limited (FL), an unlisted public company, is engaged in the business of manufacturing and sale of plastic bottles in Lahore. FL is planning to appoint Gul Maher as the chief executive officer (CEO) of the company. During an interview with Gul Maher, he disclosed to the board that his wife Mona is running a corporate brokerage house in Lahore and that his son Sultan, who is a business graduate, is engaged in the business of selling plastic bottles in Multan. Gul Maher also disclosed to the board that he sometimes provides technical assistance to Sultan without any charge.

Under the provisions of the Companies Act, 2017 explain whether FL can appoint Gul Maher as the CEO of the company. (04)

Answer

(b) Removal of a director:

Aga Kirmani may be removed from the board by passing a resolution in a general meeting. However, since he was appointed unopposed, he shall not be removed from his office if the number of votes casted against the resolution equals or exceeds the number of votes calculated as per the following formula:

$$(\text{Number of directors for the term} \times \text{Number of shares}) \div \text{Number of directors for the time being}$$

i.e. $8 \times (50,000,000 \div 500) \div 8 = 100,000$ votes

Therefore, Aga Kirmani would be removed from the board if less than 100,000 votes are casted against the resolution.

(c) Appointment of chief executive:

A person who is ineligible to become a director of a company or has been disqualified to be a director of the company shall not be appointed as a CEO of any company.

A person shall not be eligible to be appointed as a director of the company if the person himself or the spouse of such person is engaged in the brokerage business. However, this condition shall be applicable only in case of a listed company.

Similarly, a chief executive of a public company shall not directly or indirectly engage in any competing business with the business carried on by the company of which he is a CEO. A business shall be deemed to be carried on indirectly by the chief executive if the same is carried on by his spouse or any of his minor children.

In the given scenario, FL is not a listed company and Sultan is not a minor son of Gul Maher. Therefore, both the above conditions are not applicable and Gul Maher is eligible to be appointed as the CEO of FL.

March 2019: Q 6

(b) Following is the composition of board of directors of Faisal Limited, a listed company:

Independent directors Khalid, Dawood, Rehmat
Non-executive directors Salman, Arif, Ashraf
Executive directors Fasih (CEO), Kashif (Director Finance)

Under the Companies Act, 2017 advise which of the above directors are eligible to be appointed as Chairman of the board. Also state the time frame for his appointment, duration of office and his responsibilities. (06)

Answer

(b) Chairman of the board

Any of the non-executive directors (i.e. Khalid, Dawood, Rehmat, Salman, Arif, Ashraf) may be appointed as Chairman. The board of Faisal Limited shall within fourteen days from the date of election of directors appoint a chairman who shall hold office for a period of three years unless he earlier resigns, becomes ineligible or disqualified under the Companies Act, 2017 or is removed by the directors.

The responsibilities of the Chairman are defined by the board. Chairman shall be responsible for leadership of the board and ensure that the board plays an effective role in fulfilling its responsibilities.

September 2019: Q 7

(c) The Board of Directors of Hassam Textiles Limited (HTL) is not satisfied with the performance of its chief executive officer (CEO) and wants to remove him from his office before the expiry of his term on 31 August 2020.

Briefly explain the options available to HTL for removal of CEO under the above situation. (02)

Answer

(c) Removal of chief executive

The board by resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration of his term of office notwithstanding anything contained in the articles or in any agreement between the company and such chief executive.

September 2019: Q 8

(b) Faraz Limited (FL) is considering to enter into a contract with Bari Limited (BL) for the construction of its new manufacturing facility. The Board of Directors of FL has authorized Hasan Ali, an executive director, to negotiate the final price with BL. Sara Ali, who is a chief executive in BL, is the spouse of Hasan Ali.

In view of the provisions of the Companies Act, 2017 briefly explain the responsibilities of Hasan Ali towards FL under the above circumstances. (05)

Answer

Being a director of FL, Hasan is an agent of the shareholders of the company and stands in a fiduciary relationship with them. So, he is required to make all contracts and all transactions in good faith and in best interest of the company. In this case, Hasan is deemed to be indirectly interested in the transaction as his wife Sara is chief executive in BL with whom FL is entering into construction contract. If a director makes any transaction or enters into any contract on behalf of the company in which he is interested by any means, he should give a complete disclosure of the nature of his interest.

Therefore, Hasan should give a notice to all other directors that he should be regarded as concerned or interested in the transaction to be entered into with BL and such notice shall be given at the first meeting of the directors at which the question of entering into the contract or arrangement is to be taken into consideration. After disclosing his interest in the transaction, Hasan should not be part of the director's meetings when such contract or transaction is to be discussed.

March 2020: Q 6

A team of young engineers is planning to incorporate a private limited company which would provide machine maintenance services to large companies. The company would initially be incorporated with a share capital of Rs. 20 million.

(b) Appointment of the first and subsequent directors and chief executive and terms of their office. (07)

Answer

b) First directors

The number of directors and the names of the first directors shall be determined by the subscribers of the memorandum. The number of first directors may be increased by appointing additional directors by the members in a general meeting.

The first directors shall hold office until the election of directors in the first annual general meeting.

Subsequent directors are elected in the first general meeting of the company. The directors so elected, hold office for a period of three years.

First Chief executive

The name of the first chief executive shall be determined by the subscribers of the memorandum of association of the company. The first chief executive shall, unless he earlier resigns or otherwise ceases to hold office, hold office up to the first annual general meeting of the company or, if a shorter period is fixed by the subscriber at the time of his appointment, for such period.

Subsequent Chief Executive Within fourteen days from the date of election of directors or the office of the chief executive falling vacant, as the case may be, the board shall appoint any person, including an elected director, to be the chief executive but such appointment shall not be for a period exceeding three years from the date of appointment.

September 2020: Q 10

Election of directors of Excellent Technologies Limited (ETL), a listed company, is scheduled to be held on 15 October 2020. The board of directors has requested Mohsin, one of the leading engineers, to contest the upcoming election as non-executive director for adding value to the board.

Before responding to the offer of ETL's board, Mohsin has sought your advice on the following concerns:

- I. Since he has no relationship with ETL either pecuniary or otherwise, can he contest the election as non-executive director?
- II. Would he be subjected to unforeseen liability that may arise due to adverse action of other directors?

Under the provisions of the Companies Act, 2017, advise Mohsin with regard to the above concerns.
(6)

Answer

- (i) It is pertinent to note that pecuniary or other relationship with company are not the only criteria to establish eligibility of a person to be a non-executive director. Rather, in order to be a non-executive director of ETL, Mohsin shall have to ensure that he:
 - § is not from among the executive management team and may or may not be independent;
 - § is expected to lend an outside viewpoint to ETL's board;
 - § does not undertake to devote his whole working time to ETL and will not involve in managing the affairs of the ETL;
 - § is not a beneficial owner of ETL or any of its associated companies or undertakings;
 - § does not draw any remuneration from ETL except the meeting fee.
- (ii) As far as the unforeseen liability due to adverse action of ETL's other directors are concerned Mohsin if elected as non-executive director, shall be held liable, only in respect of such acts of omission or commission by ETL which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently.

CHAPTER NO. 14

ISSUE OF SHARES & DISTRIBUTION OF PROFITS

September 2014: Q 7

(a) Baykarar Limited (BL), a listed company, wants to increase its production capacity and is in the process of acquiring a new plant for its soda ash project. The company is contemplating to finance the project by issuing ordinary shares to the general public. In order to enhance the credibility of its expansion project, BL's management has decided to include a statement from Mr. Suleman, a mechanical engineer, in its prospectus.

Under the provisions of the Companies Act, 2017 describe the conditions which must be satisfied for the inclusion of statement from Mr. Suleman in BL's prospectus. (05)

September 2014: Q 9

(b) The Directors of Sigma Limited wish to recommend a final dividend. Under the provisions of the Companies Act, 2017 advise the directors about the restrictions, if any, with regard to the declaration of dividend. (05)

March 2015: Q 7

(b) Samjhota Limited (SL) has an authorised capital of Rs. 100,000,000 divided into 2,000,000 shares of Rs. 50 each. The directors have decided to alter the conditions of the capital clause of SL's memorandum of association. Advise the directors about the provisions of the Companies Act, 2017 applicable to such alteration. (04)

Answer

(b) **Power of company limited by shares to alter its share capital:**

Samjhota Limited, if so authorised by its articles, may alter the conditions of the capital clause of its memorandum so as to:

- increase its share capital by such amount as it thinks expedient;
- consolidate and divide the whole or any part of its share capital into shares of larger amount than its existing shares;
- sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; or
- cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the share so cancelled:

For exercising the above power, Samjhota Limited is required to obtain approval of members in a general meeting through a special resolution.

In the event of consolidation or sub-division of shares, the rights attaching to the new shares shall be strictly proportional to the rights attaching to the previous shares so consolidated or sub-divided.

The resolution along with the altered copy of the memorandum shall be filed with the registrar within 15 days of passing the same.

September 2015: Q 9

On 31 July 2015, the Directors of Clove Engineering Limited (CEL), a listed company, declared an interim dividend of Rs. 5 per share. However, before making payment of the dividend, the company suffered huge losses due to a massive fire in the factory. The CFO has informed the board of directors about CEL's inability to pay the dividend in time.

Under the provisions of the Companies Act, 2017 briefly describe:

- (a) When an interim dividend is deemed to have been declared by CEL. (02)
- (b) The consequences of non-payment of dividend within the stipulated time. (03)

(c) The circumstances under which CEL may not be responsible to pay dividend to certain shareholders. (05)

Answer

(a) Declaration of interim dividend:

Interim dividend is deemed to have been declared on the date of commencement of closing of share transfer for purposes of determination of entitlement of dividend; and where register of members is not closed for such purpose, on the date on which such dividend is approved by the directors.

(b) Consequences of non-payment of dividend:

Where a dividend has been declared by a company but is not paid within the stipulated time, the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to five million rupees.

A chief executive convicted as above shall from the day of the conviction cease to hold the office of chief executive of the company and shall not, for a period of five years from that day, be eligible to be the chief executive or a director of that company or any company.

(c) Circumstances under which CEL may not be responsible to pay dividend to certain shareholders:

CEL may withhold dividend after obtaining prior approval of Commission within 45 days of declaration of dividend. The Commission may grant the permission after providing an opportunity to the shareholder, entitled to receive the dividend, of making representation against the proposed action.

CEL may not be responsible to pay dividend in the following cases, namely:

- where the dividend could not be paid by reason of the operation of any law;
 - where a shareholder has given directions to CEL regarding the payment of the dividend and those directions cannot be complied with;
 - where there is a dispute regarding the right to receive the dividend;
 - where the dividend has been lawfully adjusted by CEL against any sum due to it from the shareholder;
- where failure to pay the dividend or to post the warrant within the stipulated period was not due to any default on the part of CEL.

September 2015: Q 8

(a) Paid up capital of Sigma Limited comprises of two classes of ordinary shares, A and B, having different rights. The directors approved a resolution in their meeting granting the same rights to both the classes of shareholders. Later, the members in a general meeting approved the resolution by altering the articles of association to give effect to the variation in the rights of shareholders.

Under the provisions of the Companies Act, 2017:

- i. What do you understand by variation of shareholders' right? (01)
- ii. A small group of members holding class A shares is objecting to the variation in their rights. Discuss how these aggrieved members can challenge the variation of their rights and ask for its cancellation. (05)

March 2016: Q 7

(a) The Board of Directors of Tanveer Limited, a listed company, has decided to invite general public for the subscription of its securities and therefore, intends to issue/publish a prospectus.

Under the provisions of the Securities Act, 2015 advise the directors about the time frame within which approval for the issuance of prospectus may be obtained and the time for which the prospectus may remain valid after approval. (02)

Answer

(a)

Time frame within which approval may be obtained:

TL must apply to the Commission for approval of the issuance of prospectus to the public, by submitting a copy of the prospectus not less than twenty one days before the proposed date of publication of the prospectus.

Time for which the prospectus may remain valid after approval:

A prospectus approved by the Commission shall be valid for a period of sixty days from the date of such approval. However, this time period may be extended by the Commission for reasons to be recorded.

September 2016: Q7

(a) Super Star Limited has recently been incorporated as a public limited company in Islamabad. The directors are planning to make a public offer of its securities and are in the process of finalizing the prospectus.

Under the provisions of the Securities Act, 2015 advise the directors with regard to the following:

- i. particulars of the amount of minimum subscription i.e. the minimum amount which must be raised by the issue of shares. (03)
- ii. publication of prospectus. (03)

March 2017: Q 8

(b) The Directors of Generous Limited (GL), a listed company, have recommended dividend equal to 40% of GL's undistributed profits. However, in the annual general meeting, the shareholders demanded that 60% of the undistributed profits should be distributed as dividend.

Under the provisions of the Companies Act, 2017 explain the following:

- i. whether the shareholders are justified in their demand. (02)
- ii. whether the directors' recommendation is appropriate if 70% of the undistributed profits comprise of unrealized gain on investment property. (02)
- iii. consequences if the directors fail to pay the dividend within the stipulated time. (02)

Answer

(b)

i. According to Companies Act, 2017, the shareholders may reduce, accept or reject the dividend proposed by the directors, but shall not approve an amount exceeding the amount recommended by the directors of GL. In view of above, shareholders are not justified in their demand.

ii. No dividend shall be declared or paid out of unrealized gain on investment property credited to profit and loss account. Therefore, 40% dividend recommended by the directors is inappropriate.

iii. Where a dividend has been declared by a company but is not paid within the stipulated time, the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to five million rupees.

A chief executive convicted as above shall from the day of the conviction cease to hold the office of chief executive of the company and shall not, for a period of five years from that day, be eligible to be the chief executive or a director of that company or any company.

March 2017: Q 7

(a) Khush-haal Limited (KL) is engaged in the business of manufacturing garments in Karachi. The directors, in order to expand KL's business, are planning to acquire a garment factory in Multan. In order to finance the acquisition cost, they intend to issue 5 million ordinary shares to the general public. They have appointed Mr. Sehgal as an expert to evaluate the above project and include his statement in KL's prospectus.

Under the provisions of the Securities Act, 2015 advise the directors about the conditions to be fulfilled for including Mr. Sehgal's statement in KL's prospectus for its issuance to the general public. (03)

Answer

(a) Conditions which must be satisfied for the inclusion of a statement of expert in prospectus.

A prospectus inviting persons to subscribe for shares shall not include a statement purporting to be made by an expert, unless he is a person who is not, and has not been, engaged or interested in the formation or promotion, or in the management, of the company.

Such prospectus including a statement purporting to be made by expert shall not be issued, unless he has given his written consent to the issue of the prospectus containing his statement and has not withdrawn such consent before the delivery of a copy of the prospectus to the registrar for registration; and a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

September 2017: Q 7

(b) Tafriq Textiles Limited has issued two classes of shares with Class A being entitled to two votes per share and Class B having one vote per share. In a general meeting, a resolution was placed to give the same rights to the shareholders of both the classes, which was passed by the required majority. However, Gul & Sons holding Class 'A' shares are not satisfied with the decision taken by the company.

Under the provisions of the Companies Act, 2017 discuss how Gul & Sons can challenge the above resolution and have it revoked. (05)

Answer

(i) Variation of shareholders' rights

Variation of shareholders' rights means changing of the rights i.e. reducing, enhancing or cancelling the rights of the shareholders.

(ii) Petition to cancel variation of rights

The aggrieved members of who are objecting to the variation in their rights must not be less than 10% of the class of aggrieved members. The aggrieved members may apply to the Court for an order cancelling the resolution varying their rights.

The application shall be made within 30 days of the date of such resolution.

The aggrieved members shall have to show to the Court's satisfaction, that:

- Some facts which would have had a bearing on the decision of the shareholders were withheld by Sigma Limited in getting the special resolution passed, or
- The variation would unfairly prejudice the interest of the members.

The decision of the Court on any such application shall be final.

Company is required to file copy of the court order within 15 days with the registrar.

March 2018: Q9

Under the provision of the Companies Act, 2017 briefly describe the following:

(b) the restrictions, if any, with regard to the declaration of final dividend by a company listed on stock exchange. (05)

Answer

(b) Restrictions imposed with regard to the declaration of dividend:

No dividend shall be paid by a company otherwise than out of profits of the company.

No dividend shall be declared or paid by a company for any financial year, out of the profits of the company made from the sale or disposal of any immovable property; or assets of a capital nature comprised in the undertaking or any of the undertaking of the company unless the business of the company consists, whether wholly or partly, of selling and purchasing any such property or assets, except after such profits are set off or adjusted against losses arising from the sale of any such immovable property or assets of a capital nature.

No dividend shall be declared or paid out of unrealized gain on investment property credited to profit and loss account.

March 2018: Q 7

(a) On 25 February 2018 Badar Limited (BL), in a move to list its shares on Pakistan Stock Exchange, received approval from the Commission for the publication of prospectus.

Under the provisions of the Securities Act, 2017 advise BL with regard to the publication of the prospectus in the newspaper and its placement on the company's website. (06)

Answer

Minimum subscription:

The particulars as to the minimum amount which must be raised by the issue of shares in order to provide the sums, required to be provided in respect of each of the following:

- Purchase price of property to be purchased.
- Preliminary expenses including underwriting commissions etc.
- Repayment of any money borrowed for above matters.
- Working capital.
- Any other expenditure.

If the company intends to meet all or any of the above needs from any source other than the issue of shares, such source shall be disclosed.

Publication of prospectus:

Company is required to publish the prospectus in the following manner:

- obtain Commission's approval for the publication of the prospectus.
- publish prospectus within 60 days from the date of Commission's approval unless the period of 60 days has been extended by the Commission by reasons to be recorded in writing.
- publish the prospectus in full text or in such abridged form as may be prescribed, at least in one Urdu and one English daily newspaper.
- the prospectus shall not be published in the newspapers less than seven days or more than thirty days before the commencement of the public subscription.
- the prospectus in full text and the shares subscription form shall be uploaded on company's website and shall remain there from the date of its publication in the newspapers till the closing of the subscription.

September 2018: Q 7

(b) The Directors of Solar Limited (SL), want to arrange finances for their factory expansion project and have decided to issue 1,000,000 ordinary shares to general public. The directors want the public subscription to commence not later than 7 October 2018. Mobeen, who is the company secretary, has proposed the following schedule for the purpose:

i. On 12 September 2018, a copy of the prospectus shall be submitted to the Registrar Joint Stock Companies for approval.

ii. For ease of access, the copies of the prospectus shall be available for members' inspection at SL's main showroom. The prospectus shall remain open for inspection from 28 September 2018 till 4 October 2018 at a fee of Rs. 50.

iii. The prospectus would be published in a popular fortnightly Urdu magazine on 30 September 2018.

iv. Public subscription would commence on 5 October 2018.

Suggest appropriate revision in the above proposal to bring it in line with the provisions of the Securities Act, 2015. (05)

Answer

(b) Approval and publication of prospectus

The prospectus is required to be approved by the Commission and not by the Registrar Joint Stock Companies.

A copy of the prospectus shall be submitted to the Commission for approval, not less than 21 days before the proposed date of its publication.

Therefore, a copy shall be submitted to the Commission on or before 9 September 2018 OR (8 September 2018) OR (7 September 2018) but not afterwards.

The prospectus shall be published in at least one Urdu and one English daily newspaper and not in an Urdu fortnightly magazine.

The date of newspaper publication of the prospectus shall not be less than 7 days before the commencement of the public subscription. Therefore, public subscription shall not commence any time before 7 October 2018 OR (6 October 2018) OR (5 October 2018).

Lastly, Sufficient number of copies of the prospectus shall be made available for inspection of general public, free of charge, from the date of its publication i.e. 30 September 2018 OR (29 September 2018) OR (28 September 2018) till the closing of the subscription. i.e. 7 October 2018 OR (6 October 2018) OR (5 October 2018) at SL's registered office and not at its showroom. Further, the copies shall also be made available with all the securities exchanges of the country, with all the bankers to the issue, the concerned share registrar, the concerned balloter and the concerned credit rating agency, if any, and should also be uploaded on SL's website.

September 2018: Q 8

(b) On 8 September 2018, the directors of Ashanti Limited (AL), a listed company, declared an interim dividend of Rs. 5 per share and announced book closure from 28 September 2018 to 3 October 2018, both days inclusive.

Under the provisions of the Companies Act, 2017 briefly describe when AL should pay the above dividend. Also state any four circumstances in which AL may not be considered to have committed an offence for non-payment of dividend. (07)

Answer

(b) **Payment of interim dividend:**

An interim dividend must be paid within the time as notified by the Commission.

The circumstances in which non-payment of dividend by AL shall not constitute an offence are as under:

- where the dividend could not be paid by reason of the operation of any law;
 - where a shareholder has given directions to AL regarding the payment of the dividend and those directions cannot be complied with;
 - where there is a dispute regarding the right to receive the dividend;
 - where the dividend has been lawfully adjusted by AL against any sum due to it from the shareholder;
- where failure to pay the dividend or to post the warrant within the stipulated period was not due to any default on the part of AL.

September 2018: Q 6

(b) Saga Limited (SL), a listed company, has two classes of ordinary shares i.e. Class A shares i.e. Class C, with no voting rights. Currently SL's memorandum and articles of association do not contain such class of shares. Under the provisions of the Companies Act, 2017 briefly describe the steps which the directors should take prior to issuance of Class C shares. (Procedure for issuance of shares is not required) (06).

Answer

(b) **Issue of Class C shares:**

SL can issue new class C shares only if it is permitted by the memorandum and articles of association.

Since SL's articles and memorandum lack any such classification, the directors are first required to alter the provisions of SL's articles of association and memorandum of association by passing a special resolution.

It should however be noted that where such alteration affects the substantive rights or liabilities of members or of a class of members, it shall be carried out only if a majority of at least three-fourths (3/4) of the members or of the class of

members affected by such alteration, as the case may be, exercise the option through vote either personally or through proxy.

An altered copy of the articles of association shall be filed with the registrar, within thirty days from the date of passing of the resolution. The registrar shall register the same and thenceforth the alteration shall be effective.

March 2019: Q 7

(b) Sepham Limited is in process of raising money through issuance of shares and intends to issue a prospectus.

Advise the management as to who would be liable under the Securities Act, 2015 to compensate the investors in case there is any deficiency in the prospectus and under what circumstances this liability would arise. (04)

Answer

(b) **Compensation for false or misleading prospectus**

Every issuer, director of an issuer or any person who has signed the prospectus shall be liable to pay compensation to any person who acquires any of the securities, in reliance upon the prospectus, to which the prospectus relates and suffers loss in respect of them as a result of any incorrect, untrue or misleading statement in the prospectus or the omission from it of any matter required to be included under the Securities Act, 2015.

March 2020: Q 7

(b) Under the provisions of the Securities Act, 2015 no person shall make a public offer of securities unless the Commission has approved the prospectus submitted by the issuer or offeror of the securities.

Discuss the exceptions to the above provision of the Securities Act, 2015. (04)

(c) On 4 February 2020, the Commission approved the prospectus of Victory Limited (VL) for public offer of its securities. The directors intend to publish the prospectus on 10 April 2020.

Under the provisions of the Securities Act, 2015 advise the directors with regard to the following:

- (i) The time frame within which the prospectus may be published. (02)
- (ii) The requirements for publication of prospectus. (03)

Answer

(b) The requirement of submission of prospectus for public offering of securities to the Commission and its approval is not required in the following circumstances:

- securities offered by the State Bank of Pakistan.
- securities offered in connection with a private offering or private placement and
- issue of shares of a subsidiary to the members of a listed holding company by way of specie dividend or any other distribution in the prescribed manner.
- securities are offered by the issuer to:
 - members or employees of the issuer; or
 - members of the families of any such members or employees; and
- securities are shares and are offered as bonus shares to any or all of the members of the issuer.

(c) (i) Since a prospectus approved by the Commission shall be valid for a period of sixty days from the date of such approval. Victory Limited must publish the prospectus by 3 April 2020.

However, as the directors intends to publish it on 10 April 2020, they must apply to the Commission for extension in time limit. The application for extension must contain the reasons for extension in time.

(ii) Publication of the prospectus

In Newspapers

The prospectus shall be published in full text or in such abridged form as may be prescribed, at least in one Urdu and one English daily newspaper. The prospectus shall not be published in the newspapers less than seven days or more than thirty days before the commencement of the public subscription.

On Website

The prospectus in full text shall be uploaded on the website of the issuer and shall remain there from the date of its publication in the newspapers till the closing of the subscription.

March 2020: Q 8

The Board of Directors of Giant Industries Limited (GIL), a listed company, in their meeting held on 25 February 2020 had approved 30% interim cash dividend for the shareholders. While approving the dividend payment, the board had authorized to adjust dividend payable to one of the shareholders, Kamran Ahmed, against the amount due from him.

Under the provisions of the Companies Act, 2017:

- (a) state when an interim dividend is deemed to have been declared and the responsibilities of GIL regarding its payment.
- (b) identify the circumstances under which the directors may withhold/adjust the payment of dividend.
- (c) list the steps which GIL would be required to take, for adjustment of dividend payable to Kamran Ahmed against the amount due from him.

Answer

- (a) Declaration of interim dividend:

Interim dividend is deemed to have been declared:

- ☐ on the date of commencement of closing of share transfer for purposes of determination of entitlement of dividend; and
- ☐ where register of members is not closed for such purpose, on the date on which such dividend is approved by the board.

Responsibilities of GIL for the payment of dividend:

The dividend shall only be paid out of the profits. The chief executive of GIL is responsible to make the payment of dividend to registered shareholders or to their order within such period and in such manner as may be specified.

Moreover, since dividend is payable in cash, it shall only be paid through electronic mode directly into the bank account designated by the entitled shareholders.

- (b) Circumstances under which GIL may withhold the payment of dividend to certain shareholders:

- ☐ where the dividend could not be paid by reason of the operation of any law;
- ☐ where a shareholder has given directions to GIL regarding the payment of the dividend and those directions cannot be complied with;
- ☐ where there is a dispute regarding the right to receive the dividend;
- ☐ where the dividend has been lawfully adjusted by GIL against any sum due to it from the shareholder; or
- ☐ where, for any other reason, the failure to pay the dividend or to post the warrant within the stipulated period was not due to any default on the part of GIL.
- ☐ where the member has not provided the complete information or documents, as specified by the commission.

- (c) Declaration of dividend

GIL is not required to make an application to the Commission for the adjustment of the dividend. The dividend can be adjusted after obtaining permission of the concerned shareholder for the adjustment of the dividend against any sum due to GIL from the shareholder.

September 2020: Q 8

The directors of Jhelum Limited (JL) intends to make a public offer of its securities and are in the process of preparing the prospectus. They wish to include a statement made by an expert in JL's prospectus.

(a)

Under the provisions of the Securities Act, 2015 advise the directors about:

- (i) the matters that must be considered before including the statement made by an expert in JL's prospectus.
- (ii) the conditions that must be complied with before issuing, circulating or publishing JL's prospectus containing the expert's statement.

(b)

Explain the term 'shelf registration' in the context of a prospectus as defined in the Securities Act, 2015.

(6)

Answer

- (a)
 - (i) Jhelum Limited must ensure that the expert is a person who has the power or authority to issue a certificate in pursuance of any law for the time being in force and who is not and has not been engaged or interested in the formation or promotion or in the management of the company.
 - (ii) Before issuing, circulating or publishing prospectus containing expert's statement, it must be ensured that the following conditions have been complied with:
 - § the expert has given written consent to the issue of the prospectus with the statement in the form and context in which it is included; and
 - § there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.
- (b) 'Shelf registration' means an arrangement that allows a single offering document allowing companies to make multiple offerings as disclosed in the offering document within a prescribed time and subject to prescribed conditions.

CHAPTER NO. 15

MEETINGS & RESOLUTION

March 2015: Q6

September 2018: Q 6

(a) Under the provisions of the Companies Act, 2017 briefly describe the term 'Special resolution'. (04)

Answer

Special resolution means a resolution which has been passed by a majority of not less than three-fourths of such members of the company entitled to vote as are present in person or by proxy or vote through postal ballot at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given:

Provided that if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days notice has been given.

March 2015: Q 8

(a) Karamad (Pvt) Limited was incorporated on 1 July 2014. Subsequently it was converted into a public unlisted company on 1 March 2015.

Under the provisions of the Companies Act, 2017:

- i. describe whether the company is required to hold its statutory meeting; if yes, identify the time frame within which such a meeting must be convened. (03)
- ii. what would have been your decision, had the company been converted into a listed company on 1 July 2015? (01)
- iii. identify those contents of the statutory report which are required to be certified by the company's auditor. Also specify the purpose of the auditor's report. (02)
- iv. state the requirements of law regarding the certification and filing of statutory report

(b) Under the provisions of the Companies Act, 2017 state who may call an annual general meeting of the company. (02)

Answer

(a) **Statutory meeting**

i. Since Karamad (Pvt) Limited has been converted into a public company within a period of one year from the date of its incorporation, therefore, it is required to hold a statutory meeting.

ii. The meeting is required to be held within a period of 180 days from the date at which the company was converted into a public company.

In case, if the company is converted into a public company, whether listed or unlisted, after one year of its incorporation it is not required to hold a statutory meeting. Therefore, in this case, since the date of conversion into public company is after one year of its incorporation no statutory meeting is required to be held. However, if the company has decided to hold its first annual general meeting earlier than that, no statutory meeting shall be required.

iii. Following are the contents of the statutory report on which the auditors of company have to issue report:

Allotment of shares
Cash received against share allotted and
Receipts and payments of the company.

The auditor's report is required to certify the correctness or otherwise of the above matters.

iv. Being unlisted public company statutory report shall be certified by chief executive of the company and at least one director.

The directors shall deliver one copy of the certified statutory report to the registrar for registration forthwith after sending the report to the members.

(b) Calling of an annual general meeting:

Normally, the annual general meeting of the company is called by the board of directors of the company.

However, if default is made in holding the annual general meeting, the Commission may, either on its own motion or on the application of any director or member of the company, call, or direct the calling of, the said meeting in such manner as the Commission may think fit.

September 2015: Q 6

(b) The 21st annual general meeting (AGM) of Noke Jhoke Limited was held on 20 August 2015. Two of the shareholders, Mateen and Ragib were not satisfied with the conduct of the meeting. One week after the meeting, they submitted a complaint to the chairman of the board of directors, requiring him to invalidate the proceedings of the 21st AGM.

In view of the provisions of the Companies Act, 2017 explain the circumstances in which Mateen and Ragib would succeed in their contention. (06)

Answer

(b) Circumstances in which proceedings of a General Meeting may be declared invalid:

In the given scenario, Mateen and Ragib would not succeed in their contention as they have filed the complaint with the chairman of the board of directors. In order to succeed, Mateen and Ragib are required to file a petition in the Court and must have 10% or more of the voting power in the company. The petition must be made within thirty days of the impugned meeting. The Court may declare the proceedings of a general meeting or part thereof invalid and direct holding of a fresh meeting on the following grounds:

- By reason of any material defect or omission in the notice; or
- Irregularity in the proceedings of the meeting which prevented Mateen and Ragib from using their rights.

September 2016: Q 8

(a) Under the provisions of the Companies Act, 2017 what do you understand by the term 'Extraordinary general meeting'? Who may call such meeting and what should be the quorum of such meeting? (07)

Answer

(a) Extraordinary General Meeting (EGM)

Every general meeting of a company other than annual general meeting and the statutory meeting is called extra-ordinary general meeting.

Calling of EGM:

The extraordinary general meeting may be called by:

- the directors of the company at any time on their own motion; or

- the directors on the requisition of member(s) representing not less than ten per cent of the total voting power on the date of deposit of the requisition; or
- by the requisitionists themselves, if the directors do not proceed to call an extraordinary general meeting within 21 days of deposit of requisition; or
- the Commission either on its own motion, or on the application of any director or member of the company, if default is made in holding the extraordinary general meeting on the requisition of the member(s).

Quorum of an EGM:

The quorum of an extra ordinary general meeting shall be:

- (a) in the case of a public listed company, unless the articles provide for a larger number, not less than ten members present personally, or through video-link who represent not less than twenty-five percent of the total voting power, either of their own account or as proxies;
- (b) in the case of any other company having share capital, unless the articles provide for a larger number, two members present personally, or through video-link who represent not less than twenty-five percent of the total voting power, either of their own account or as proxies;
- (c) in the case of a company not having share capital, as provided in the articles.

September 2017: Q 10

(a) The annual general meeting (AGM) of Kamyab Limited is due to be held on 12 September 2017 at 10:00 am at company's registered office.

Being the company secretary, comment on the following situations under the provisions of the Companies Act, 2017:

- i. Shafiq lodged a proxy form on 10 September 2017 at 5:00 pm. (01)
- ii. Anwar appointed Amjad as his proxy by depositing the proxy form on 8 September 2017. On the next day, Anwar came to know that Amjad has gone abroad, so he deposited a proxy form in favour of Waqas. (01)
- iii. Sajid appointed Javed as his proxy. Javed's name is not in the members' register. (1.5)
- iv. One of the members, Asaan Limited has inquired about who may attend the AGM on its behalf and what would be the right(s) of such attendee. (2.5)
- (c) Farhan Limited, a listed company, has received a request from a shareholder who holds 9% shares of the company, to inspect the register containing the minutes of proceedings of general meetings. Discuss the rights of the shareholder to inspect the above register. (03)

Answer

(a) Proxy

- i. Proxy form lodged by Shafiq is invalid as it was not submitted at least 48 hours before the meeting.
- ii. Both the proxy forms submitted by Anwar would be considered invalid as a member is entitled to appoint only one proxy to attend the meeting and not more.
- iii. Proxy of Sajid is invalid as Javed is not a member. However, if articles of association of Kamyab Limited permit appointment of non-members as proxy then proxy of Sajid is valid.

iv. Asaan Limited may, by resolution of its directors, authorize any of its officials or any other person to act as its representative at the annual general meeting. The person so authorized shall be entitled to exercise the same powers on behalf of Asaan Limited as if he was shareholder of Kamyab Limited.

(c) Minutes of proceedings of general meeting:

The shareholder, irrespective of the amount of shareholding, has the right to inspect the minutes of proceedings of the general meetings without charge during business hours, subject to such reasonable restrictions as Farhan Limited may by its articles or in general meeting impose so that not less than two hours in each day be allowed for inspection.

March 2018: Q 8

(b) Unique Limited is due to hold its first annual general meeting on 20 April 2018. Under the provisions of the Companies Act, 2017 advise the directors with regard to the types of businesses which would be deemed to be special business and also discuss additional formalities which are required to be complied with in respect of notice containing special business. (06)

Answer

(b) Special Business:

In case of an annual general meeting, all businesses to be transacted shall be deemed special other than:

- the consideration of financial statements and the reports of the board and auditors;
- the declaration of any dividend;
- the election and appointment of directors in place of those retiring; and
- the appointment of the auditors and fixation of their remuneration.

Where any special business is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly. Where any item of business consists of according of an approval to any document by the meeting, the statement shall specify the time and the place for the inspection of such document.

September 2018: Q 9

(a) Joint Limited (JL) was incorporated as a public company on 1 February 2018 and was authorized by the registrar to commence business from 1 April 2018. The board of directors is divided on the issue of holding first general meeting of its members. Two directors are of the view that the meeting should be held on 30 September 2018 whereas majority of the directors want to hold it on 30 October 2018.

In the light of the provisions of the Companies Act, 2017:

- i. Explain whether you agree with the proposal of the majority of the directors or the other two directors. (03)
- ii. What would be your opinion in (i) above if the directors want to hold first annual general meeting on 25 September 2018? (01)

Answer

(a) (i) Statutory meeting:

JL is required to hold its first general meeting (Statutory meeting) within a period of 180 days from the date at which it was entitled to commence business or within nine months from the date of its incorporation whichever is earlier.

Therefore, in view of the above, JL is required to hold its statutory meeting not later than 27 September 2018.

(ii) If the directors decides to hold its first AGM on 25 September 2018 then no statutory meeting shall be required.

September 2019: Q 7

(b) Fancy Works Limited (FWL) is in process of finalizing the prerequisites of holding its first Annual General Meeting (AGM) to be held on 31 October 2019.

(i) Advise FWL about the matters relating to proxies which must be included in the notice of AGM. (02)

(ii) Arbaz Limited (AL) is a member of FWL. How would AL represent itself in the AGM?

Answer

(b) (i) **Matters relating to proxies included in notice of AGM**

The notice of AGM shall prominently set out:

- the member's right to appoint a proxy and
- the right of such proxy to attend, speak and vote in the place of the member at the meeting and
- every such notice shall be accompanied by a proxy form.

(ii) **Representation of body corporate or corporation at meetings**

AL (company) is member of FWL (another company) may, by resolution of its board authorise an individual to act as its representative at any meeting of FWL, and the individual so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents.

March 2020: Q 9

The annual general meeting of Alpha Limited (AL), a listed company, is scheduled to be held in March 2020 to transact several ordinary and special businesses such as election of directors including independent directors.

Under the provisions of the Companies Act, 2017 list the information which must be included in AL's notice of annual general meeting to be published in the newspapers. Your answer should cover all aspects which must either be included in or be annexed to notice of annual general meeting.

Answer

Information to be included in the notice of general meeting

Notice of AL's annual general meeting should:

For normal business

- ☐ specify the place, day and hour of the meeting;
- ☐ include a statement of the business to be transacted at the meeting;
- ☐ specify availability of a option of video-link facility to those members on demand who hold 10% of the total paid up capital or such other percentage as may be specified, and who reside in a city;
- ☐ prominently set out member's right to appoint a proxy and the right of such proxy to attend, speak and vote in the place of the member at the meeting;
- ☐ be accompanied by a proxy form;

For special business

- ☐ the special resolution, shall be accompanied by the draft resolution;
- ☐ a statement shall be annexed to the notice of the meeting setting out all material facts concerning such special business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected, shall be specified in the statement;

In case of election of directors

- ☐ expressly state the number of directors fixed for election and names of the retiring directors.

In case of election of independent directors

- ☐ indicate the justification for choosing the appointee for appointment as independent director in the statement of material facts.

CHAPTER NO. 16

ACCOUNTS & INVESTMENTS

September 2014: Q 9

(a) Every company is required to keep, at its registered office, proper books of account. Under the provisions of the Companies Act, 2017 briefly explain the following:

- i. When such books are NOT deemed to be proper. (02)
- ii. When a company is deemed to have kept proper books of account in case of a branch office. (03)

Answer

(a)

i. Proper Books of Account:

The books of account are not deemed to be proper with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or the branch office, as the case may be, and to explain its transactions.

ii. Proper books of account in case of a branch office:

Where a company has a branch office in Pakistan or outside Pakistan, it shall be deemed to have complied with the provisions of Companies Act, if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns are sent periodically by the branch office to the company at its registered office or the other place decided by directors.

March 2015: Q 10

(a) The company's annual financial statements are in the process of finalisation for presentation at company's AGM.

Being company secretary, you are required to advise the company regarding approval and signing of financial statements under the provisions of the Companies Act, 2017. (05)

Answer

(a) Approval and authentication of Financial Statements

The financial statements must be approved by the board of the company and signed on behalf of the board by the chief executive and at least one director of the company, and in case of a listed company also by the chief financial officer:

Provided that when the chief executive is for the time being not available in Pakistan, then the financial statements may be signed by at least two directors:

Provided further that in case of a private company having a paid up capital not exceeding one million rupees, the financial statements shall also be accompanied by an affidavit executed by the chief executive if the accounts are signed by him or by any of the directors if the accounts has been signed by two directors, as the case may be, that the financial statements have been approved by the board.

The financial statements of a single member company shall be signed by one director.

March 2016: Q 9

(b) Companies Act, 2017 requires that all the investments of the company must be made and held in the name of the company itself and not in someone else's name.' State the exception(s) to this general rule. (04)

Answer

Investments always to be kept in the name of the company

Being a separate legal person, a company can make investments in any other company or security in its own name. Companies Act 2017 requires that all the investments of the company must be made and held in the name of the company itself and not in the name of any other person. However, there are a few exceptions to this rule.

Exceptions

Following are exception to this general rule of keeping the investments of company in its own name:

- If a company has made equity investments in any other company. Due to this investment, it enjoys the right to nominate any person as director of the investee company. The investor company is allowed to hold such number of shares in the name of that nominee who shall be appointed as a directors of investee company and would require certain qualification shares of investee company.
- A holding company may hold any shares in its subsidiary company in the name of its nominees if the number of members of the subsidiary company has reduced below required minimum number of members required for that company.

Company may also place its investment in securities in the name of central depository company if it so desires and the securities are allowed to be kept in central depository system.

September 2016: Q 9

(a) Aabshar Limited, a listed company, was incorporated on 1 April 2015. The directors are in the process of finalizing the annual accounts of the company and have sought your advice with regard to the directors' report to be sent to the members along with the annual accounts.

Under the provisions of the Companies Act, 2017 advise the directors about the particulars to be set out in their report for submission to the members of the company. (07)

Answer

(a) Directors' report:

The Directors of Aabshar Limited shall make out and attach to the accounts, a report containing following particulars namely:

- a report with respect to the state of the company's affairs and a fair review of its business, the amount (if any), that the directors recommend should be paid by way of dividend and the amount (if any), they propose to carry to the Reserve Fund, General Reserve or Reserve Account.
- the names of the persons who, at any time during the financial year, were directors of the company;
- the principal activities and the development and performance of the company's business during the financial year;
- a description of the principal risks and uncertainties facing the company;

- any changes that have occurred during the financial year concerning the nature of the business of the company or of its subsidiaries, or any other company in which the company has interest;
- the information and explanation in regard to any contents of modification in the auditor's report;
- information about the pattern of holding of the shares in the form specified;
- the name and country of origin of the holding company, if such company is a foreign company;
- the earning per share;
- the reasons for loss if incurred during the year and future prospects of profit, if any;
- information about defaults in payment of any debts and reasons thereof;
- comments in respect of adequacy internal financial controls;
- any material changes and commitments affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statement relates and the date of the report; and
- any other information as may be specified.

March 2017: Q8

(a) Two companies may be regarded as associates of each other, 'If a person who is a director of the company or holder of shares carrying voting power of 20% or more in that company is also the director or holder of shares carrying voting power of 20% or more in the other company'.

Under the provisions of the Companies Act, 2017 briefly describe the circumstances under which the above relationship may not qualify the Companies to be regarded as 'Associated Companies'. (04)

Answer

(a) **Directorships or Shareholdings not to be taken into account:**

The following directorships or shareholdings are not to be taken into account for determining the status of a company as an associated company:

(i) directorship of a person or persons by virtue of nomination by concerned Minister-in-Charge of the Federal Government or as the case may be, a Provincial Government or a financial institution directly or indirectly owned or controlled by such Government or National Investment Trust; or

(ii) directorship of a person appointed as an independent director; or

(iii) shares owned by the National Investment Trust or a financial institution directly or indirectly owned or controlled by the Federal Government or a Provincial Government; or shares registered in the name of a central depository, where such shares are not beneficially owned by the central depository;

September 2017: Q8

(c) Karam Limited (KL), an unlisted public company, owns 30% shares in Jumma (Private) Limited (JPL). In order to finance its working capital requirements, JPL has asked for a loan of Rs. 1,000,000 from KL.

Under the provisions of the Companies Act, 2017 briefly describe the conditions which are required to be met, if KL agrees to grant the loan. (03)

Answer

(ii) Loan to KL (associated company)

KL holds 30% paid up capital of JPL therefore, MPL is an associated company of KL. Under the provisions of Companies Act, 2017 KL may make investment in the form of loan in its associated company namely MPL under following conditions:

- under the authority of a special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto.
- through a written agreement specifying the terms and conditions of investment.
- the return on investment in the form of loan shall not be less than the borrowing cost of KL.
- the directors of KL shall certify that the investment is made after due diligence and that the JPL has the ability to repay the loan.

it complies with the regulations made by the Commission in this regard.

September 2017: Q 8

(b) Pluto (Private) Limited (PPL), having paid-up capital of Rs. 7.5 million, has laid its annual financial statements for approval at PPL's annual general meeting.

Under the provisions of the Companies Act, 2017 advise the company secretary about the requirements for filing the financial statements with reports and other documents, if any. (03)

Answer

(b) **Filing of accounts:**

Pluto (Pvt) Limited (PPL) is not required to file its accounts with registrar as its paid up capital does not exceed Rs. 10,000,000.

March 2018: Q 9

Under the provision of the Companies Act, 2017 briefly describe the following:

(a) the requirements of a private limited company for presenting its first financial statements in the annual general meeting and whether the financial statements are required to be audited. (05)

Answer

(a) **Financial statements of a private company:**

The first financial statements of a private limited company must be laid before the general meeting not later than sixteen months after the date of incorporation of the company.

In addition to above, the financial statements must be laid within a period of one hundred and twenty days following the close of the financial year. However, for any special reason, the registrar may extend the period for a term not exceeding thirty days.

The first financial statements of a private limited company shall be audited by its auditor and auditor's report shall be attached thereto. However if the paid up capital of the private company does not exceed Rs. 1,000,000 then audit is not mandatory.

March 2019: Q 10

(b) Under the provisions of Companies Act, 2017 it is the responsibility of the board to prepare directors' report for each financial year. The Act has further prescribed the minimum contents of such report.

In the above context, list the matters which are required to be included in the business review section of the directors' report of a listed company.

Answer

(b) Business review of listed company

In the case of a listed company, the business review section must, to the extent necessary for understanding the development, performance or position of the company's business, include:

- (i) the main trends and factors likely to affect the future development, performance and position of the company's business;
- (ii) the impact of the company's business on the environment;
- (iii) the activities undertaken by the company with regard to corporate social responsibility during the year; and
- (iv) directors' responsibility in respect of adequacy of internal financial controls as may be specified.

September 2019: Q 8

(a) Kalaam Limited (KL) is considering the following options to invest its excess funds:

- (i) Acquire 8% shareholdings in Lighter Oil Limited (LOL) for Rs. 120 million. LOL is a growing company and is expected to fetch higher returns in futures.
- (ii) Grant a loan of Rs. 100 million to Monsoon (Private) Limited (MPL) for launching a new product. The loan would carry interest at the rate prevailing in the market. KL currently holds 25% of MPL's paid-up capital.

Under the provisions of the Companies Act, 2017 specify the condition(s) which KL must fulfill before opting for any of the above investment options. (07)

Answer

(a) Power to make investment

(i) Acquisition of 8% shareholding in LOL

Under the provisions of the Companies Act 2017, the power to make investments in a company rests with directors of the company who can make an investment or disinvestment decision, usually in a meeting through a resolution. However, investment in associated company cannot be made by the directors themselves. Since LOL is not an associated company of KL therefore the board of KL may approve this investment by passing a resolution in their meeting.

(ii) Loan to MPL (associated company)

KL holds 25% paid up capital of MPL therefore, MPL is an associated company of KL. Under the provisions of Companies Act, 2017 KL may make investment in the form of loan in its associated company namely MPL under following conditions:

- under the authority of a special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto.
- through a written agreement specifying the terms and conditions of investment.
- the return on investment in the form of loan shall not be less than the borrowing cost of KL.

- the directors of KL shall certify that the investment is made after due diligence and that the MPL has the ability to repay the loan.

it complies with the regulations made by the Commission in this regard.

September 2020: Q 9

On 26 September 2020, the board of directors of Duck Fertilizers Limited (DFL), a public unlisted company, in its recent board meeting has approved a short term loan to Kitten Limited, one of the associated companies, to meet its working capital requirement, for which shareholders' approval is required. DFL's annual general meeting is scheduled to be held in March 2021.

Under the provisions of the Companies Act, 2017:

- briefly discuss the options available to DFL for obtaining shareholders' approval.
- state the procedure(s) to be followed for obtaining the approval in each option identified in (a) above. ***(Ignore procedures relating to voting)***

Answer

- Following options are available to DFL for obtaining shareholders' approval:
 - The board of directors of DFL may obtain approval of its shareholders by calling an extraordinary general meeting (EGM). As the board is entitled to call EGM at any time to consider any matter which requires shareholders' approval.
 - Nonetheless, as the approval required for matter that is special business, and being a public unlisted company, if DFL's number of members are not more than fifty then DFL's board of directors has another option to get the shareholders' approval by passing resolution by circulation.
- The procedures to be followed for obtaining shareholders' approval:
 - Holding Extra Ordinary General Meeting**
 - § Twenty-one days' notice of the meeting shall be given to every member in the manner required by the Act.
 - § However, DFL being a public unlisted company, if all the members entitled to attend and vote at the said EGM so agree, a meeting may be held at a shorter notice.
 - § Notice of the meeting shall specify the place, the day and hour of the meeting along with a statement of the business to be transacted at the meeting and a draft resolution.
 - § A statement shall be annexed to the notice of the meeting setting out all the material facts concerning the short term loan, including the nature and extent of interest, if any, of the directors.
 - § Members may participate in the meeting personally, through video-link or by proxy.
 - § Every member shall have votes proportionate to the paid-up value of the shares held by him and no such member shall be debarred from casting his vote.
 - Passing of resolution by the members through circulation**
 - § The resolution shall be circulated together with the necessary papers, if any, to all the members.
 - § The resolution passed by circulation must be signed by all the members for the time being entitled to receive notice of a meeting.
 - § The said resolution shall be noted at the subsequent meeting of members and made part of the minutes of such meeting.

September 2020: Q 11

(a) Naseer, a non-executive director of Oliver Travels Limited (OTL), while reviewing details of investments made by OTL, has shown his concerns on the following shares that are not held in the name of OTL:

- (i) 500 shares in Pak Travels (Private) Limited (PTPL) are held in the name of Rahim who is an employee of OTL. PTPL is a wholly owned subsidiary of OTL.
- (ii) 5,000 shares of Tours & Tours (Private) Limited (TTPL) are held in the name of

Sami, who is a non-executive director in TTPL by virtue of OTL's nomination. OTL owns 30% voting shares in TTPL.

Under the provisions of the Companies Act, 2017 briefly explain the possible reasons for holding investment of OTL in the name of Rahim and Sami.

(b) Under the provisions of the Companies Act, 2017 briefly discuss:

- I. the time frame within which quarterly financial statements should be prepared and the requirement, if any, for its review
- II. the filing requirement of the quarterly financial statements.

Answer

- (a) (i) PTPL is wholly owned subsidiary company of OTL means it has one shareholder. Whereas, PTPL being a private company must have at least two members, hence OTL may hold any shares in the name of any of its nominee to ensure that the number of members of PTPL is not reduced below the statutory limit.
- (ii) OTL has nominated Sami as non-executive director by virtue of its investment in TTPL. It means OTL have right to appoint or get elected any person as director of TTPL, therefore, in the light of the provisions of Companies Act, 2017 OTL have the right to transfer TTPL's shares in the name of Sami up to an amount not exceeding the nominal value of the qualification shares which are required to be held by TTPL's director. Such shares may be registered or held by OTL jointly with Sami or in the name of Sami alone.

(b) (i) **Time frame for preparation of quarterly financial statements**

Every listed company shall prepare the quarterly financial statements within the period of:

- § thirty days of the close of first and third quarters of its year of accounts; and
- § sixty days of the close of its second quarter of its year of accounts.

Requirement of review of second quarter financial statements

The cumulative figures for the half year presented in the second quarter accounts shall be subjected to a limited scope review by the statutory auditors of the company in such manner and according to such terms and conditions as may be determined by the Institute of Chartered Accountants of Pakistan and approved by the Commission.

(ii) **Filing of quarterly financial statements**

The quarterly financial statements must be transmitted electronically to the Commission, Securities Exchange and with the Registrar within the period as specified above.

However, upon an application by the company, the Commission may, extend the period of filing in case of accounts of the first quarter for a period not exceeding thirty days, if the company was allowed extension in respect of its previous financial statements.

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