

Terminology used by the examiner in asking the questions

Law exam cannot be answered unless the students learn the meanings of the following terminologies:

Briefly (in a few words)

Q. Briefly describe the terms 'Company court' and 'Company bench'.

Company court:

A company court is the High Court which has jurisdiction under the Companies Ordinance, 1984. Its jurisdiction is in the place at which the registered office of the company is situated.

Company bench:

Company bench(s) is/are one or more benches constituted in each High Court by the chief justice of the High Court,

The Federal Government may empower any civil court to exercise all or any of the jurisdictions by the Companies Ordinance, 1984.

Explain (give detail)

Q. 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.

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.

In relation to (with regard to)

Q. Tariq Limited a listed company, is due to hold its annual general meeting on 15 September 2017. Discuss the rights and duties of the auditors of Tariq Limited in relation to the meeting.

Duty of the auditors

Since Tariq Limited is a listed Company, auditors' or a person authorized by them in writing must be present in the general meeting in which the balance sheet and profit and loss account and the auditors' report are to be considered.

Rights of the auditors

The auditor has a right to receive all notices of and any communications relating to A.GM which any member of Tariq Limited is entitled to receive and to be heard at the AGM which he attends on any part of the business which concerns him as auditor.

Define (giving description/ detail of a thing by its properties)

Q. Define "Special Resolution"

Special resolution

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.

Describe (express; explain)

Q. Under the provisions of the Negotiable Instruments Act, 1881 briefly describe the terms 'Negotiation' and 'Indorsement'.

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 indorser."

Analyze (explore; evaluate; examine)

Q. 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.

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:

- There should be a relationship by agreement between two or more persons;
- They should run a business with the intention of sharing profits; and
- 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.

State (express/present)

Q. 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.

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.

Advise (give an opinion)

Q. 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.

Condition of Valid Offer

In order to constitute a valid offer, Masoom must fulfill 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.

Entitled (allowed)

Q. 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.

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.

Whether (used to ask question)

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.

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.

Assuming (assume)

Q. 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.

Time being essence of the contract, following would be the rights of Riaz Grocery Stores (RGS) under the circumstances:

- 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.

Consider/Considered (judge; evaluate)

Under the provisions of the Companies Act, 2017 briefly describe the circumstances in which a company would be considered as a holding company of another company.

Holding Company:

A company would be a holding company of another company if:

- (a) It controls the composition of the board of another company; or
- (b) It exercises or controls more than one-half of its voting securities of another company either by itself or together with one or more of its subsidiary companies

Identify/indicate (recognize/pinpoint)

Q. 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.

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.

List (record)

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.

Exceptions to rescind the contract

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.

Consequences (results; outcome)

Q. 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 Ordinance, 1984 briefly describe the consequences of non-payment of dividend within the stipulated time.

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 other company.

Grounds (basis; foundation)

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.

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.

Circumstances (situation, position)

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.

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

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