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SHAMBHUNATH INSTITUTE OF ENGINEERING AND TECHNOLOGY
SHAMBHUNATH INSTITUTE OF MANAGEMENT

Subject Code: **KMB 207**Subject: **Legal Aspects Of Business**

MBA

SEMESTER- II

FIRST SESSIONAL EXAMINATION, EVEN SEMESTER, (2019-2020)

Branch: **MBA**

Time –1hr 30 min

Maximum Marks – 30

NOTE: (Attempt All the Sections)

SECTION – A

1. Attempt all questions in brief.

(1*5 = 5)

Q N	QUESTION	Marks	CO	BL
a.	What is Law of Contract? Ans- A contract is an agreement made between two or more parties which the law will enforce. Sec 2(h) defines contract "as an agreement enforceable by law".	1	1	1
b.	Explain the elements of Contract. Ans- 	1	1	1
c.	Discuss Termination of Agency. Ans- Termination of an agency takes its effect when it becomes known to an agent. When the principal revokes the agency, it comes into effect only when it is known to the agent. However, in the case of third parties, termination comes into effect only when such termination of agency comes to their knowledge.	1	1	2
d.	What is Partnership? Ans- A partnership is an arrangement where parties, known as business partners, agree to cooperate to advance their mutual interests. The partners in a partnership may be individuals, businesses, interest-based organizations, schools, governments or combinations.	1	1	1
e.	Short note on Negotiable Instruments Act. Ans- According to section 13 of Negotiable Instruments Act, 1881- A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer.	1	1	1

SECTION - B

2. Attempt any TWO of the following.

(2*5 = 10)

Q N	QUESTION	Marks	CO	BL
a.	<p>What are the Duties of an Agent?</p> <p>Ans- Duty not to delegate his duties. Latin principle of “<i>delegatus non potest delegare</i>” states that an agent to whom some authority has been delegated cannot further delegate that authority to another person. The has been imbibed in Section 190 of the Indian Contract Act. It means an agent who agreed to act personally cannot appoint a sub-agent to do that job. But, there are certain exceptions to this rule where an agent can employ a sub-agent and these are, where there is a custom of trade to that effect, when the nature of agency so requires, when action does not require a personal skill and when the principal expressly or impliedly agrees to the appointment of a sub-agent for doing certain work.</p> <p>Duty to follow the principal’s directions. an agent is bound to conduct the business of the principal according to the directions given by the principal. In absence of any directions, the agent should conduct the business according to the custom which prevails in doing the business of the same kind at the place where the agent conducts the business. When the agent does not act as stated above, if any loss is sustained by the principal, he must make it good to his principal, and if any profit accrues, he must account for it (Section 211).</p> <p>Duty to show proper skill and care as in generally possessed by persons engaged in similar business unless the principal has notice of his want of skill. According to Section 212, he is bound to make compensation to his principal, in respect of the direct consequences of his own neglect, want of skill, or misconduct.</p> <p>Duty to render proper accounts to the principal on demand (Section 213).</p> <p>Duty to communicate with the principal and in case of difficulty use all his diligence in communicating with his principal, and in seeking to obtain his instructions (Section 214).</p> <p>Duty to not deal on his own account in the business of the agency, unless the principal consents thereto. And, if the agent does so without the prior consent of the principal, the principal may, repudiate the transaction by showing either that any material fact has been dishonestly concealed from him or that the dealings of the agent have been disadvantageous to him (Section 215) or claim from the agent any benefit which may have resulted to him from the transaction (Section 216).</p> <p>Duty to pay sums received by him on the principal’s account (Section 218). Before making the payment to his principal, the agent is entitled to deduct out of the same sums as are lawfully due to him (Section 217).</p>	5	2	1
b.	<p>Discuss the Essentials of Valid Acceptance.</p> <p>Ans- Acceptance must be given by that person only to whom the offer is made:</p> <p>An acceptance to be valid must be given only by a person to whom offer has been given. In other words, acceptance must move from the offeree and no one else.</p> <p>Acceptance must be communicated:</p> <p>Offeree has to communicate his acceptance to offerer.</p>	5	1	2

	<p>The acceptance must be given within the time prescribed or within a reasonable time:</p> <p>Sometimes, the time limit is fixed within which an acceptance is to be given. In such cases, the acceptance must be given within the fixed time limit. In case, no time is prescribed, the acceptance should be given within a reasonable time. The term ‘reasonable time’ depends upon the facts and circumstances of each case.</p> <p>Acceptance must be Un-Conditional:</p> <p>It is another important essential element of a valid acceptance. A valid contract arises only if the acceptance is absolute and unconditional. It means that the acceptance should be in total and without any condition.</p> <p>Acceptance must be communicated in the method specified by offerer:</p> <p>When an offer is made for the same, acceptance must be communicated in the method specified by offerer.</p>			
<p>c.</p>	<p>Elaborate No Consideration, No Contract.</p> <p>Ans- Consideration being one of the essential elements of a valid contract the general rule is that “an agreement made without consideration is void. But there are a few exceptions to the rule, where an agreement without consideration will be perfectly valid and binding. These exceptions are as follows:</p> <p>Agreement made on account of natural love and affection[Sec. 25 (1)]: An agreement made without consideration is enforceable. If it is</p> <p>(i) Expressed in writing</p> <p>(ii) Registered under the law for the time being in force for the registration of documents</p> <p>(iii) Is made on account of natural love and affection</p> <p>(iv) Between parties standing in a near relation to each other.</p> <p>Agreement to compensate for past voluntary service (Sec.25 (2)).</p> <p>A promise made without consideration is also valid, if it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or done something which the promisor was legally compelled to do.</p> <p>Contract of agency. Section 185 of the Contract Act lays down that no consideration is necessary to create an agency.</p> <p>Remission by the promisee, of performance of the promise (Sec. 63). For compromising a due debt, i.e., agreeing to accept less than what is due, no consideration is necessary.</p>	<p>5</p>	<p>4</p>	<p>3</p>
<p>d.</p>	<p>Explain the Doctrine of privity of Contract.</p>	<p>5</p>	<p>4</p>	<p>2</p>

	<p>Ans- As per the dictionary meaning privity of contract means:</p> <p>Legal doctrine that a contract confers rights and imposes liabilities only on its contracting parties. They and not any third-party, can sue each other (or be sued) under the terms of the contracts. Privity is the legal term for a close, mutual, or successive relationship to the same right of property or the power to enforce a promise or warranty.</p> <p>As per the legal definition of privity of contract:</p> <p>The doctrine of privity in contract law provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it. The doctrine of privity of contract means that only those involved in striking a bargain would have standing to enforce it. In general this is still the case, only parties to a contract may sue for the breach of a contract, although in recent years the rule of privity has eroded somewhat and third party beneficiaries have been allowed to recover damages for breaches of contracts they were not party to. There are two times where third party beneficiaries are allowed to fall under the contract. The duty owed test looks to see if the third party was agreeing to pay a debt for the original party. The intent to benefit test looks to see if circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance. Any defense allowed to parties of the original contract extend to third party beneficiaries. A recent example is in England, where the Contract (Rights of Third Parties) Act 1999 was introduced. Indian law is practically same as the English common law. However, under the Indian law ‘consideration may move from the promisee or any other person.’ In the chinnaya vs. rammayya case, an old lady by a deed of gift, gave over certain properties to her daughter under the direction that she should pay her aunt a certain sum of money. The same day the daughter refused to pay her aunt the money on the plea that no consideration has moved from her aunt to her. It was held that sister of the old lady (aunt) was entitled to maintain the suit as consideration had move from the old lady, for her sister to the daughter.</p>			
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SECTION - C

3. Attempt any ONE part of the following :

(1*5 = 5)

Q N	QUESTION	Marks	CO	BL
a.	<p>Discuss Quasi Contract.</p> <p>Ans- There are certain situations wherein certain persons are required to perform an obligation despite the fact that he hasn't broken any contract nor committed any tort. For instance, a person is obligated to restore the goods left at his home, by mistake, and keep it in good condition. Such obligations are called quasi-contracts.</p> <p>Rationale Supply of necessities [S.68] Payments by interested persons [S.69] Liability for non-gratuitous act [S.70] Finder of goods [S.71] Mistake or coercion [S. 72]</p>	5	1	1
b.	What are the relevant factors in determining the fundamental breach?	5	1	2

	<p>Ans- According to the statement of the unofficial Secretariat Commentary on the 1978 Draft Convention,</p> <p>12 scholars from different legal systems debated on standards for determining whether a breach is fundamental. A consensus was reached that the determination must be made in the light of the circumstances of each case. There is no such agreement, however there are some relevant factors, as generated by scholars and practitioner, in determining whether an injury is substantial enough to amount to fundamental breach which are roughly categorized under the following headings:</p> <p>a) nature of the contractual liability;</p> <p>b) gravity of the circumstances of breach;</p> <p>c) remedy-oriented approach;</p> <p>d) (in)ability of performance;</p> <p>e) (un)willingness to perform;</p> <p>f) lack of reliance on the other's party's future performance;</p> <p>g) offer to cure; and h) possible cure.</p>			
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4. Attempt any ONE part of the following :

(1*5 = 5)

Q N	QUESTION	Marks	CO	BL
a.	<p>What are the characteristics of a negotiable instruments?</p> <p>Ans- Property :</p> <p>The possessor of the instrument is the holder and owner thereof. A negotiable instrument does not merely give possession of the instrument, but right to property. Whosoever gets possession of the instrument becomes its owner and is entitled to the sum mentioned therein as the holder. The complete right of ownership in a negotiable instrument passes by mere delivery where instrument is payable to 'bearer'. Where instrument is payable to 'order', right of ownership passes by endorsement and delivery.</p> <p>Defects in title:</p> <p>The holder in good faith and for value called the 'holder in due course' gets the instrument free from all defects of any previous holder.</p> <p>Remedy:</p> <p>The holder can sue upon the negotiable instrument in his own name. All prior parties are liable to him. A holder in due course can recover the full amount on the instrument.</p>	5	1	1

	<p>Rights:</p> <p>The holder in due course is not affected by certain de-fenses which might be available against previous holder, for example, fraud, to which he is not a party.</p> <p>Payable to order:</p> <p>A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable to a particular person. An instrument which does not restricts its transferability expressly or impliedly is negotiable whether the word 'order' is mentioned or not. The word 'Order' or 'Bearer' is no longer necessary to render an instrument negotiable. Where the instrument prohibits transfer or indicates that it shall not be transferrable is nevertheless valid as between the parties thereto, but it is not a negotiable instrument.</p>			
b.	<p>Explain the Kinds of Negotiable instruments.</p> <p>Ans- Negotiable Instruments are written contracts whose benefit could be passed on from its original holder to a new holder. In other words, negotiable instruments are documents which promise payment to the assignee (the person whom it is assigned to/given to) or a specified person. These instruments are transferable signed documents which promises to pay the bearer/holder the sum of money when demanded or at any time in the future.</p> <p>Promissory notes</p> <p>A promissory note refers to a written promise to its holder by an entity or an individual to pay a certain sum of money by a pre-decided date. In other words, Promissory notes show the amount which someone owes to you or you owe to someone together with the interest rate and also the date of payment.</p> <p>Bill of exchange</p> <p>Bills of exchange refer to a legally binding, written document which instructs a party to pay a predetermined sum of money to the second(another) party. Some of the bills might state that money is due on a specified date in the future, or they might state that the payment is due on demand.</p> <p>Cheques</p> <p>A cheque refers to an instrument in writing which contains an unconditional order, addressed to a banker and is signed by a person who has deposited his money with the banker. This order, requires the banker to pay a certain sum of money on demand only to to the bearer of cheque (person holding the cheque) or to any other person who is specifically to be paid as per instructions given.</p>	5	2	1

5. Attempt any ONE part of the following :

(1*5 = 5)

Q N	QUESTION	Marks	CO	BL
a.	<p>Brief on Rights and Liabilities of Partners.</p> <p>Ans- (a) Every partner has a right to take part in the conduct and management of business.</p>	5	2	1

	<p>(b) Every partner has a right to be consulted and heard in all matters affecting the business of the partnership.</p> <p>(c) Every partner has a right of free access to all records, books and accounts of the business, and also to examine and copy them.</p> <p>(d) Every partner is entitled to share the profits equally.</p> <p>(e) A partner who has contributed more than the agreed share of capital is entitled to interest at the rate of 6 per cent per annum. But no interest can be claimed on capital.</p> <p>(f) A partner is entitled to be indemnified by the firm for all acts done by him in the course of the partnership business, for all payments made by him in respect of partnership debts or liabilities and for expenses and disbursements made in an emergency for protecting the firm from loss provided he acted as a person of ordinary prudence would have acted in similar circumstances for his own personal business.</p> <p>(g) Every partner is, as a rule, joint owner of the partnership property. He is entitled to have the partnership property used exclusively for the purposes of the partnership.</p> <p>(h) A partner has power to act in an emergency for protecting the firm from loss, but he must act reasonably.</p> <p>(i) Every partner is entitled to prevent the introduction of a new partner into the firm without his consent.</p> <p>(J) Every partner has a right to retire according to the Deed or with the consent of the other partners. If the partnership is at will, he can retire by giving notice to other partners.</p> <p>(k) Every partner has a right to continue in the partnership.</p> <p>(l) A retiring partner or the heirs of a deceased partner are entitled to have a share in the profits earned with the aid of the proportion of assets belonging to such outgoing partner or interest at six per cent per annum at the option of the outgoing partner (or his representative) until the accounts are finally settled.</p>		
<p>b.</p>	<p>Discuss the Discharge of Negotiable instruments. Ans- Discharge of a Negotiable Instruments</p> <p>When the liability of the party, primarily and ultimately liable on the instrument, comes to an end, the instrument is said to be discharged. The discharge of the instrument results in extinguishment of all rights of action under it and the instrument ceases to be negotiable. After discharge of a negotiable instrument, even a holder-in-due-course acquires no right under it and he cannot bring a suit on the face of it.</p> <p>Ways in which Negotiable Instruments are discharged?</p>	<p>5</p>	<p>2</p>

	<p>A negotiable instrument may be discharged in any one of the following ways.</p> <ul style="list-style-type: none">By payment in due courseBy the principal debtor becoming the holderBy renunciation of the rights by the holderBy cancellation of the instrumentBy an act that would discharge an ordinary contract		
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