# Odisha Judicial Service (Mains) 2012

## Law of Contract · optional paper

JS – 12/6 · 3 hours · 150 marks

Answer six questions, selecting two questions each from any two sections and one each from the remaining two sections.

### Section A

**1.** (a) "The test of contractual intention is objective, not subjective. What matters is not what the parties had in mind, but what a reasonable person would think, in the circumstances, their intention to be"? Analyst this statement with the help of the judicial decisions in view of the common intention of the parties to enter into legal obligation. [15 marks]
(b) Analyse the concept of mistake of fact as provided under the Indian Contract Act, 1872. [10 marks]

**2.** (a) "Section 73 of the Indian Contract Act is declaratory of the common law principle as to damages." Critically analyse the above statement with judicial decisions. [15 marks]
(b) 'A', a singer enters into a contract with 'B', the manager of a theater party to sing at his theater two nights in every week during the next two months in a consideration of Rs. 100 for each night's performance. On the sixth night, A' willfully remains absent With the assent of 'B', 'A' sings in the seventh night. State the effect of refusal of party to perform promise wholly and determine the rights and liabilities of the parties. [10 marks]

**3.** (a) "The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract." Explain this with the provisions of law and judicial decisions. [15 marks]
(b) The Board of Directors of a company appoints Mr. 'X' as managing director for managing the affairs of the company with expressly limiting his powers to order goods only up to Rs. 5,000 and beyond that amount with the prior sanction Of the Board. But Mr. X' orders goods worth of Rs. 10,000 to Mr. 'Y' the third party. Analyse the authority of Mr. X' and determine the liability of the company before 'Y', the third party in the context of agent's authority. [10 marks]

### Section B

**4.** (a) Define 'sale' with its essentials. Distinguish between 'Contract of Sale' and 'Hire- purchase'. [15 marks]
(b) 'A' sold a car by auction to X', the highest bidder. X' offered to pay for the car by a cheque and he was allowed to do so when he signed the document stating that the property in the car would not pass to the buyer X' until the amount of the cheque had been credited to A's account. The cheque was subsequently dishonoured, but in the mean time, 'X' sold the car to Y' and Y sold it to 'Z'. Then 'A' sued 'Z' to recover back the car and his contention was that Z' could not get a good title to the car because X' had not become the owner of the car as the cheque given by him had been dishonoured and no transferee from him could get a good title. Can 'A recover the car from Z' ? Decide by giving justifications. [10 marks]

**5.** Discuss the rules regarding delivery of goods. Explain the duties and liabilities of the seller when he delivers the goods to the carriers or wharfinger. [25 marks]

**6.** (a) Explain the maxim nemo dat quod non habet with exceptions to the rule. [15 marks]
(b) "The implied conditions and warranties provided in the Act are binding in every contract of sale

unless they are inconsistent with any express conditions and warranties agreed to by the parties." Explain. [10 marks]

### Section C

**7.** "The scope of the implied authority of a partner has been limited through statutory restrictions." Explain this. Can restrictions of implied authority be imposed through an agreement between parties ? [25 marks]

**8.** (a) 'The rights of the parties to make any contract to regulate their mutual rights and duties is subject to the provisions of the Partnership Act.' Explain. [15 marks]
(b) 'D' who is not actually a partner in the firm consisting of 'A, 'B', 'C' represents to X' that he is also a partner in that firm. On the faith of that representation, X' gives credit to the firm. Can X' make 'D' liable under the doctrine of holding out ? Decide with suitable case laws. [10 marks]

**9.** (a) Explain the position of minor admitted to the benefits of Partnership. What would happen to the firm if a minor is made full-fledge partner in the partnership firm at the time of its creation. [15 marks]
(b) 'A', 'B', 'C' entered into partnership and contributed a capital of Rs. 20,000 and Rs. 5,000 respectively, but they share the profits and losses equally. On dissolution, if the assets realize Rs. 17,000 only, there is deficiency of capital to the extent of Rs. 18,000. Determine the mode of settlement of accounts. [10 marks]

### Section D

**10.** (a) Explain the conditions necessary to be a holder in due course. What is the difference between holder in due course and holder for collections? [15 marks]
(b) State the legal validity of 'electronic cheque' and 'truncated cheque'. [10 marks]

**11.** (a) Explain the circumstances in which the maker, acceptor or indorser are discharged from liability. [15 marks]
(b) 'X' has his account with 'Y' bank. One day in the morning the balance in X's account was Rs. 1,000. About 1 PM of the same day, Rs. 500 was paid into his account; a little later at 3 PM a cheque drawn by X' for Rs. 1,200 was presented. Rs. 500 have not yet been credited to the account of 'X', the payment was refused. Discuss with case law, whether the refusal is justified. [10 marks]

**12.** (a) "Presumption as provided under the Negotiable Instrument Act operate in favour of or against parties to the negotiable instrument or their privies." Explain this with the special rules of evidence. [15 marks]
(b) A bill of exchange was drawn by 'A' in California where the rate of interest is 25%, and accepted by 'B', payable in Washington where the rate of interest is 6%. The bill is indorsed in India, and is dishonoured. An action on the bill is brought against 'B' in India. Discuss the liability of 'A' if he is charged as drawer. [10 marks]