Odisha Judicial Service (Mains) 2013

Law of Contract · optional paper

JSM – 13/6 · 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 agrees to sell a car worth Rs. 5,00,000 for Rs. 50. A's consent to the agreement was freely given. Explain this problem with reference to the rules of consideration. [25 marks]

2. A is an employee in a government corporation, B. B entered into a contract of service with A which says that A can be terminated from employment just by three month's notice or pay in lieu of notice and without any ground. A is terminated from employment on payment of three month's salary. A challenged it on the ground that the contract of service which he had with B is opposed to public policy and he entered into the contract out of necessity. Explain the validity of contract with reference to the provisions of Indian Contract Act. [25 marks]

3. "The principle of frustration of contract or of impossibility of performance is applicable to a great variety of contracts". — explain. [25 marks]

Section B

4. "Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment", there is no implied condition or warranty under a contract of sale. Explain the above statement with reference to decided cases. [25 marks]

5. "Risk prima facie passes with the passing of the property from the seller to buyer" — Explain. [25 marks]

6. Explain the unpaid seller's right of stoppage in transit. [25 marks]

Section C

7. "The relation of partnership arises from contract and not from status"—explain. [25 marks]

8. (a) Explain the right of a partner to sue for the dissolution of a firm. [20 marks]
(b) A and B are the partners of a firm. A is in the habit of attending the firm's business in a drunken state all the time. B seeks the dissolution of the firm on the ground that it affects firm's reputation and it also amounts to A's misconduct. A pleads that it is purely a personal matter which can not be a ground for dissolution of a firm. Advise. [5 marks]

9. (a) Explain the liability of a firm for its partners' acts. [15 marks]
(b) X and Y are the partners of a firm. X without the knowledge of Y bribed the clerk of Z's firm, a competitor in the trade and induced the clerk, in breach of his duty to his employer Z, to disclose the confidential information with regard to Z's business. After knowing this Z sued both X and Y for liability. Y pleaded that neither he nor firm is liable for X's act. X contended that he acted in the ordinary course of firm to obtain such information and in the best interests of the firm. Decide. [10 marks]

Section D

10. (a) Explain different presumptions related to Negotiable Instruments under Negotiable Instruments Act. [15 marks]

(b) X issued cheques on his account to a woman with whom he was liking and the money was credited to her account. Subsequently it was known that X had by fraud obtained cheques from his employer and paid them into his account from where the money was collected into the woman's account When questioned, it was contended that there is a presumption in favour of woman as holder-in-due course. Decide. [10 marks]

11. (a) What is negotiation and explain different kinds of negotiation. [15 marks]

(d) A indorses an instrument to another and keeps it in his papers where it is found after his death and then delivered to the indorsee. What are the rights of indorsee on the instrument? [10 marks]

12. (a) Explain the ways in which the liability on an instrument is discharged. [15 marks]

(b) A draws a cheque in favour of B for Rs. 10,000 and when the cheque ought to be presented, A has the funds in his account to meet it. The Bank fails before the cheque is presented. Explain the liability of drawer to the holder of the cheque. [10 marks]