Odisha Judicial Service (Mains) 2014

Law of Contract · optional paper

JSM – 14/6 · 3 hours · 150 marks

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

Section A

1. (a) "The Indian Contract Act, 1872 contains certain provisions which impose contractual liability on a person under certain circumstances even if he never entered into contract." Discuss this statement with the help of statutory provisions and decided cases. [15 marks]
(b) "Damages are compensatory not penal." Elucidate. [10 marks]

2. (a) Analyse the definition of consideration given in the Contract Act. Explain its main elements with the help of decided cases. [15 marks]
(b) 'A' while still a minor by falsely representing himself to be the age of majority entered into an agreement to sell his house to 'B' and took from him a sum of Rs. 25 lakh as full and final consideration amount. However later 'A' refused to execute the sale deed of his house in favour of B on the plea of minority. Decide the case with the help of statutory provisions and decided cases. [10 marks]

3. (a) "The liability of surety presupposes the existence of a separate liability of the principal debtor. His liability is thus secondary or collateral which comes into existence only in default by the principal debtor." In the light of this statement, discuss the nature of surety's liability. [15 marks]
(b) A surety gives the guarantee to the tune of Rs. 25,000 for an overdraft to be allowed by the bank to the principal debtor. The bank and principal debtor altered this amount of guarantee from Rs. 25,000 to Rs. 20,000 without consent of surety. Decide with the help of decided cases. [10 marks]

Section B

4. "A vendor is bound not to disguise or artifice the goods to conceal the defects but under the doctrine of caveat emptor ordinarily he is not bound to disclose every defect of the goods." In the light of this statement explain the doctrine of caveat emptor and point out its exceptions. [25 marks]

5. (a) Who is unpaid seller ? What are the rights of unpaid seller against goods ? [15 marks]
(b) A person purchased a second hand car from a dealer by making payment. He used the car for a few months. Then police seized the car as stolen one. Can he recover full price from the seller ? Decide. [10 marks]

6. (a) When the property in the goods passes from the seller to buyer ? Discuss the significance of passing of property. [15 marks]
(b) A toy dealer displayed in his shop window some plastic toy catapults. A child of six was attracted and bought one. While he was using it, it broke off and injured his left eye. Is the shopkeeper liable ? Decide. [10 marks]

Section C

7. (a) "Although sharing of profits is one of the essential elements of every partnership but every person who shares the profits need not always be a partner." Comment on the correctness of the

statement and discuss the essentials of the partnership. [15 marks]
(b) Define 'Partnership at Will'. [10 marks]

8. (a) Is registration of a partnership firm compulsory under the Indian Partnership Act, 1932 ? State the effects of non-registration of a firm. [15 marks]
(b) X, Y and Z are three partners in a firm. The firm is not registered. The firm files a suit against H for Rs. 1,000, for goods supplied to him. After filing the suit but before actual hearings in the suit, the firm is registered. Is the suit maintainable ? [10 marks]

9. (a) Generally a person who is not a partner in the firm cannot be made liable for the acts of the firm. Discuss the cases where liability of a non-partner can arise as a partner. [15 marks]
(b) Discuss the circumstances under which a firm may be dissolved by the Court. [10 marks]

Section D

10. (a) Discuss that 'a holder in due course' is a 'holder' but a 'holder' is not 'holder in due course'. [15 marks]
(b) "Every cheque is a bill of exchange but every bill of exchange is not a cheque." Explain. [10 marks]

11. (a) What is an endorsement ? Explain and illustrate the different kinds of endorsements. [15 marks]
(d) When a cheque is said to be dishonoured ? Discuss the statutory provisions relating to dishonour of cheques. [10 marks]

12. Define a Negotiable Instrument. Explain the main features of Negotiable Instruments. What are the main categories of Negotiable Instrument ? [25 marks]