Odisha Judicial Service (Mains) 2023

Law of Contract · optional paper

3 hours · 150 marks

The figures in the right-hand margin indicate marks. Answer six questions, selecting two questions each from any two Sections and one each from remaining two Sections.

Section—A

1(a). Explain 'enforceability of agreements'. [10 marks]

1(b). What is consideration? [5 marks]

1(c). At the time of renewal of contract, X, an employee, was asked to sign a document 'agreement not to compete' and the terms in the agreement specifies that X does not compete with the employer, Y, for 2 years if he leaves Y. X did not receive anything for signing this agreement. Discuss the enforceability of this agreement citing case-laws. [10 marks]

2(a). What is 'quasi contract'? [5 marks]

2(b). Explain the types of contracts mentioned under Contract Act, which fall under 'quasi contracts'. [10 marks]

2(c). The State Government asked an empanelled contractor to do some construction work, without signing a formal contract. The contractor completed the work. Can he claim the money for the work he has performed? Discuss. [10 marks]

3(a). Explain "a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person..." with the necessary elements of that contract. [10 marks]

3(b). What are the rights of the promisee in such (the above) type of contract? [10 marks]

3(c). A contaminated farm was sold. The contract made the buyers renovate the real estate and the contamination incurred medical expenses for their manager, who had fallen ill. Once the contract was rescinded, can the buyer claim for the cost of renovation and the medical expenses? [5 marks]

Section—B

4(a). What is sale of goods? [5 marks]

4(b). How is sale different from hire-purchase? [10 marks]

4(c). A sold B a specific cargo of goods, but the goods were lost in transit. What are the consequences of 'destruction of goods' under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected? [10 marks]

5(a). 'Once a condition is always a condition.' What is a 'condition' under Sale of Goods Act? [10 marks]

5(b). How does condition differ from warranty under Sale of Goods Act, 1930? Explain with illustrations. [10 marks]

5(c). X purchased a second-hand bike from Y. Unknown to the fact that the bike was a stolen one, he used the bike. Later, he was compelled to return the same. Is there a breach of warranty? Explain. [5 marks]

6(a). Who is an 'Unpaid seller'? Explain his rights. [10 marks]

6(b). Define 'document of title to goods'. [5 marks]

6(c). The proprietor XYZ Oil Mills, Delhi-Shahdra, entered into a contract with ABC, for sale of one tank wagon of mustard oil with a condition of 1/2 per cent leakage. The plaintiff dispatched one tank wagon. The R/R was sent to the defendants through the Bank and the plaintiff drew a hundi for ₹xxxx on the defendants on account of price of the oil dispatched. The defendants, repudiating the contract, wrongfully refused to honour the hundi and to receive the R/R from the Bank and to take delivery of the oil. The contract expressly reserves a right of re-sale on buyer's default. Can the unpaid seller claim damages? Decide. [10 marks]

Section—C

7. Explain the following : [25 marks]

(a) Partnership at will

(b) Sleeping partner

(c) Firm

(d) Partnership property

(e) Minor as a partner

8(a). Mutual agency is the conclusive test of a partnership. Explain. [10 marks]

8(b). Aman and Aryan bought a property together and then rented it and later the rent that would be generated to be shared together. Is there a partnership? [5 marks]

8(c). Explain the grounds for dissolution of a firm. [10 marks]

9(a). Explain the rights and duties of partners under Partnership Act. [15 marks]

9(b). A partnership amongst A, B and C and the memorandum of partnership states that A will manage the business and will be paid ₹ 2,000 per month, but shall have no share in profits of the firm. In a suit for dissolution, A declines any liability for losses as he is not a partner. Decide. [5 marks]

9(c). Explain 'implied authority of a partner'. [5 marks]

Section—D

10(a). Define 'negotiable instruments' under The Negotiable Instruments Act, 1881. Elaborate with illustrations. [20 marks]

10(b). Who is a 'holder in due course'? [5 marks]

11(a). A draws a bill payable to his own order on B, who accepts. A afterwards endorses the bill to C, C to D and D to E. [15 marks]

Examine the relationship :

(i) Between E and B, what is the position of A, B, C and D?

(ii) Between E and A, what is the position of A, C and D?

(iii) Between E and C, what is the position of C and D?

11(b). A issued a cheque but the account is closed before honouring the cheque. What is the effect of closing the account after the cheque is issued but, before it is presented for encashment? [10 marks]

12(a). Who has to prove the element of consideration for issuing the cheque? [5 marks]

12(b). Is the presumption U/S 139 of fact or law? What is the standard of evidence to be adduced to rebut that presumption? [10 marks]

12(c). By issuing 'stop payment' instructions before the cheque is presented for payment and by issuing a notice to the payee not to present the cheque, what is the liability of the drawer? If 'stop payment' instructions are issued, can the presumption U/S 139 be raised? [10 marks]

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