West Bengal Judicial Service (Mains) 2018

Law of Contracts and Torts · compulsory paper

Time: 3 hours · Full marks: 100

Group A: answer all questions

1. (a) "No estoppel against a minor." Discuss. (b) X, a tenant, has occupied the 10th floor of a building. The owner of the building has failed to maintain the lift in order. X claims damages therefor. The owner pleads that there has been no provision in the contract as to the obligation of the owner for maintaining the lift in order. Can the owner avoid the liability on this ground? (c) A, B and C are members of a family. There is a partition in the family. On partition of the property, A, B and C promise to pay the expenses for the marriage of an unmarried girl, M, of the family. But afterwards they refuse to do the same. When M brought an action to enforce the agreement made between A, B and C, they gave the argument that since M is not a party to the contract she cannot enforce the contract. Is the argument justified? (4+3+3=10)

2. (a) "Mental acceptance is not sufficient to create a valid contract." Discuss. (b) By telephone X makes an offer to B for purchase of his Maruti car for Rs. 3 lakhs. B says "I am ready to purchase the car for Rs. 3 lakhs", but as soon as B starts to speak, the telephone line becomes dead and due to this X fails to hear the reply. B does not say anything further and claims that a contract has been created. Will he succeed? (c) A knows that the railway company will not give him the contract. Thus, A makes an agreement with B under which B is to apply for the contract and, after the contract is obtained, A will work as the actual contractor. A files a suit to enforce the agreement. Will he succeed? Decide. (4+3+3=10)

3. (a) "A contract may be a contingent contract." Explain the meaning, characteristics and rules regarding contingent contracts. (b) A agrees to pay B Rs. 1,000 if B will marry A's daughter, C. C was dead at the time of the agreement. Is the agreement valid? ((2+3+3)+2=10)

4. (a) Aditya had two digital cameras, say camera P and camera Q. He had offered his camera P for sale to Basant for Rs. 10,000. Basant had readily accepted the offer. However, at a later date, it was revealed that Basant was under the impression that Aditya had only one camera, Q, and so he had thought that he had purchased that very camera Q from Aditya. As against this, Aditya had offered for sale his camera P, and not his camera Q. Do you think that the abovementioned agreement would constitute a valid agreement, enforceable in law? Give reasons for your answer. (b) Shaukat Ali had threatened Karamatullah that he will kill his wife Abida Begum if he does not pay him a sum of Rs. 5,00,000. Karamatullah had got scared and so he had readily agreed to pay the amount of Rs. 5,00,000 to Shaukat Ali, as was demanded by him, and finally he had paid the amount, as per his promise. (i) Do you think that a valid agreement had been entered into between Shaukat Ali and Karamatullah in the instant case? Give reasons for your answer. (ii) Can Shaukat Ali be asked to refund the amount to Karamatullah under any provision of law contained in the Act? If so, quote the relevant section of the Indian Contract Act, 1872 to substantiate your point of view. (4+(3+3)=10)

5. (a) "The liability of a surety is co-extensive with that of the principal debtor." Discuss. (b) What is the extent of liability of the principal when his agent exceeds authority? (c) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. Discuss the rights of A, B and C. (4+4+2=10)

Group B: answer all questions

6. (a) "Motive is generally not relevant in determining the liability for tort; it is not the same thing as intention." Comment. (b) In tort, there is a concept of the "pigeon-hole theory" developed by Salmond. Discuss. (5+5=10)

7. (a) Mention the various elements of strict liability with reference to the principle of Rylands v. Fletcher. (b) "There are certain exceptions to the rule in Rylands v. Fletcher." Explain those exceptions in brief. (5+5=10)

8. (a) Differentiate between false imprisonment and malicious prosecution. (b) Write short notes on: (i) Absolute liability; (ii) Kinds of nuisance. (4+(3+3)=10)

9. (a) Write in brief about: (i) Trespass ab initio; (ii) Defences to negligence. (b) Is there any difference between libel and slander? If so, differentiate those. ((3+3)+4=10)

10. (a) Discuss the concept of "independent contractor". (b) Explain the meaning of battery with illustration. (c) In the parliamentary by-election of 1988, Abhishek was a qualified voter. The returning officer wrongfully refused to register the duly tendered vote by Abhishek. No loss was suffered by Abhishek because the candidate to whom he wanted to vote was declared elected. Yet Abhishek sued the returning officer for damages. Will he succeed? (4+3+3=10)