



GLOBAL CMA

LAWS AND ETHICS

Paper-6

Syllabus-2016

Answer of Postal test Paper
Set-1

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Sol. 1 MCQ

- i. B
- ii. B
- iii. C
- iv. B
- v. B
- vi. C
- vii.
- viii. A
- ix. D
- x.
- xi. A
- xii. B
- xiii. D
- xiv. C
- xv. A
- xvi. A
- xvii. D
- xviii. A
- xix. C
- xx. A



Sol. 1(b) Match

- | | |
|-----------------------------|---|
| 1. True test of Partnership | Cox V Hickman |
| 2. ultra vires | beyond (their) powers |
| 3. One Person Company | Gives the individual entrepreneurs all the benefits of a company |
| 4. Investment company | A Company whose principal business is the acquisition of shares, debentures |
| 5. Listed company | has any of its securities listed on any stock exchange. |

Sol. 2(a)

NO CONSIDERATION – NO CONTRACT: [Sec. 25]

The general rule is *ex-nudopacto non oritur action* i.e. an agreement made without consideration is void. For example if A promises to pay B ` 1000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in section 25 itself. As per section 25, an agreement made without consideration is not void in the following circumstances:

1. Promise made on account of natural love and affection.
2. Promise to compensate for voluntary services.
3. Promise made to pay a time barred debt.
4. Gift actually made:
5. Creation of agency:
6. Charitable subscription



Sol. 2(b)**Difference between contract of sale and agreement to sell.**

Basis	Contract of sale	Agreement to sell
Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
Type of contract	It is an executed contract	It is an executory contract
Type of goods	Sales takes place only for existing and specific goods.	Future and contingent goods.
Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer
Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer	The seller can sue for damages only in case of breach by the buyer
General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller	It gives a right to the buyer against the seller to sue for damages
Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the Official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.

Sol. 2©**MATERIAL ALTERATION**

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties:

Alteration by endorsee: And any such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

It may be noted that to get benefit of this section the alteration must be intentional and not purely accidental. Secondly the alteration must be material. In *Lookaram Sethiya V Ivon E John(1977) SC* defined the term material alteration as follows:

"A material alteration is one which varies the rights, liabilities or legal position of the parties as ascertained by the deeds in its original state or otherwise varies the legal effects of the instruments as originally expressed or which may otherwise prejudice the party bound by the deed as originally executed. Some of the alterations which have been held to be material in various cases are as under;

- (i) Alteration of an order cheque to a bearer cheque except by or with the consent of the drawer.
- (ii) Alteration by tearing material part of the instrument.
- (iii) Alteration by erasing account paying crossing (*J Ladies Beauty V State Bank of India, AIR 1984 Guj 33*)
- (iv) Alteration by affixing stamps without the promisor's knowledge to a note. (*Thommer v Union Khan 1967 Ker LJ 80 N Gowda v B Gowda 1968 1 Mysr LJ 591*)
- (v) Alteration of the date of payment [(*A Subha Reddy v Neelapa Reddy Rammana Reddy AIR 1966 AP 267*)]
- (vi) Alteration of the time of payment. (*Long v Moore, 1790 3 Esp 155*)

Sol. 3(b)

Principal Employer

Section 2(17) defines the term 'principal employer' as-

- in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;
- in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department;
- in any other establishment, any person responsible for the supervision and control of the establishment.

Sol. 4(a)

Disqualifications for appointment of director

Section 164 of the Act details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if-

- (a) he is of unsound mind and stands so declared by a competent court;
- (b) he is an undischarged insolvent;
- (c) he has applied to be adjudicated as an insolvent and his application is pending;
- (d) he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence;
- (e) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;
- (f) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;
- (g) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;
- (h) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or
- (i) he has not obtain DIN.

Sol. 4(b)i

Government Company

Section 2(45) defines 'Government Company' as any company in which not less than 51% of the paid up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Sol. 4(b)ii

Procedure of alteration of memorandum:

Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that-

1. **Alteration by special resolution:** Company may alter the provisions of its memorandum with the approval of the members by a special resolution.
2. **Name Change of the company –** Any change in the name of a company shall be effected only with the approval of Central Government in writing.

However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word "Private", on the conversion of any one class of companies to another class.

The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

3. **Entry in register of companies:** On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate
4. **Change in the registered office:** The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.
5. **Disposal of the application of change of place of the registered office:** The Central Government shall dispose of the application of change of place of there gistered office within a period of sixty days Before passing of order, Central Government may satisfy itself that-
 - The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
 - the sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or
 - adequate security has been provided for such discharge.
6. **Filing with Registrar:** A company shall, in relation to any alteration of its memorandum, file with the Registrar—
 - the special resolution passed by the company under sub-section (1);
 - the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.
7. **Filing of the certified copy of the order with the registrar of the states:** Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.
8. **Issue of fresh certificate of incorporation:** The Registrar of the State where the registered office is being shifted to, shall issue afresh certificate of incorporation indicating the alteration.
9. **Change in the object of the company:** A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and—
 - The details, in respect to of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;
 - The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
10. **Registrar to certify the registration on the alteration of the objects:** The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

- 11. Alteration to be registered:** No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
- 12. Only member have a right to participate in the divisible profits of the company:** Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Sol. 4©

Signing of Memorandum and articles

Rule 13 provides for signing of memorandum and articles. The Memorandum and articles shall be signed in the following manner:

- The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum. The name, address, description and occupation, if any, are to be added. One witness shall attest the signature of the subscriber. The witness also is to sign and furnish his full details.
- The witness shall state that –“I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity details for their identification and satisfied myself of his/her/their identification particulars filled in”.
- Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him;
- Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of the association;
- Where the subscriber is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate.
- Where the subscriber is an LLP, it shall be signed by a partner of the LLP, duly authorized by a resolution approved by all the partners of the LLP. In either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of association;
- Where the subscriber is a foreign national residing outside India-
 - in a country in any part of the Commonwealth , his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary Public in that part of the Commonwealth;
 - in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary Public of the Country and be duly apostilled in accordance with the Hague Convention;
 - in a country outside the commonwealth and not a party to the Hague Apostille Convention, 1961, his signatures and address shall be notarized before the Notary Public of that country and the certificate of the Notary Public shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf .
 - visited in India and intended to incorporate a company, in such cases the incorporation shall be allowed if, he/she is having a valid Business Visa.

Sol. 5(a)

Need for business ethics

The following points discuss the need and importance of business ethics-

- to stop business malpractice;
- to improve customers' confidence;
- for the survival of business;
- to safeguard consumers' rights;
- to protect employees and shareholders;
- to develop good relations;
- to create good image;
- for smooth functioning;
- consumer movement;
- consumer satisfaction;
- importance of labor;
- healthy competition.

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