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SHEKHAWATI INSTITUTE OF TECHNOLOGY
DEPARTMENT OF MANAGEMENT STUDIES
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1st Mid – Term Examination 2017-18 (MBA 4th Sem.)
Subject Code & Name – Business laws (M- 403)

Max. Marks – 30
Time – 01.30 hrs

Sec 'A'

IQ: "All contracts are agreements but all agreements are not contracts".
Comment.

Ans: In order to prove the veracity of this statement would be in the fitness of things to divide the statement in two parts:-

- I All contracts are agreements.
- II All agreements are not contracts.

I All contracts are agreements:

with a view to test veracity of the first part of the statement, it is required to go through the definition of contract as well as agreement. These terms have been defined as under:-

"Every promise and every set of promises forming consideration for each other is an agreement." Sec 2(a)

"Contract is an agreement enforceable by law." sec 2(h)

Thus the term contract includes agreement and its enforceability. The enforceability or validity of an agreement depends upon the presence of certain essentials in the contract as laid down by Sec 10 and by judicial decisions. These are as under:-

- (i) There must be two or more parties.
- (ii) There must be an agreement between two or more parties competent to contract.
- (iii) The agreement must be made with an intention to legal relations.
- (iv) The agreement must be for a lawful consideration and object.

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- (V) The agreement must be with free consent.
- (VI) The agreement must not be expressly declared void.
- (VII) All legal formalities must be complied with, if required by the governing law.

A perusal of the provisions of Sec 2(a), 2(h) and 10 reveal that every promise or reciprocal promise can be an agreement but only those agreements which are enforceable by law are contracts. And agreements to be enforceable must fulfill the requirements of Sec 10.

II All agreements are not contracts

Agreements which are not enforceable by law are definitely not contracts as per section 2(h). A few examples of such agreements can be drawn which are not enforceable by law and that shows All agreements are not contracts:

- (1) certain domestic and family agreements.
- (2) certain friendly or social agreements
- (3) Political agreements
- (4) Commercial transactions without legal binding.
- (5) Agreement not possessing all essentials of a contract.
- (6) Agreements expressly declared to be void.
- (7) Agreement to make contract.

At all, it can be safely concluded that "all contract are agreements, but all agreements are not contracts".

Q3:

(3)
Explain consideration as an element of a valid contract. "An agreement without consideration is void - state the exceptions to this rule."

Ans: The term Consideration is one of the vital elements of valid contract - Consideration is a legal term used in the sense of quid pro quo which means 'something in return'. When a party to an agreement promises to do something, he must get 'something' in return. This something is called consideration.

The general rule is that an agreement made without consideration is void [Section 25]. In every valid contract consideration is very important. A contract may be enforceable when there is adequate consideration. However, the Indian Contract Act contains certain exceptions to this rule. Following are the exceptions to the general rule 'No consideration, No contract'.

- (1) Agreement made on account of natural love and affection. [Sec 25(1)]
- (2) Promise to compensate. Sec 25(2)
- (3) Promise to pay time barred debt Sec 25(3)
- (4) Completed Gifts [Sec 1 to Sec 25]
- (5) Contract of an Agency. [Sec 185]
- (6) Contract of Guarantee [Sec 127]
- (7) Gratuitous bailment.
- (8) Remission [Sec 63]

3Q: What is Agent's authority? State the scope and extent of agent's authority? (4)

Ans: Agent's Authority:-

An agent's authority means the capacity of the agent to bind his principal. The acts of the agent, done within the scope of his authority, bind the principal. An agent is a person authorised by the principal to act on the principal's behalf and under the principal's control. For an agency relationship to arise, the principal manifests assent to the agent that the agent will act on the principal's behalf and subject to the principal's control.

Scope and Extent of Agent's Authority:-

Extent of agent's authority means what a person can do as an agent on behalf of his principal. Extent of agent's authority can be classified as follows:-

(1) Actual or Real authority:-

Actual authority is created by the principal's manifestations to the agent. Actual authority is authority that the principal grants to the agent. Actual authority may be express or implied.

(2) Ostensible or Apparent authority:-

Apparent authority is created by the conduct of the principal which causes a third person reasonably to believe that another has the authority to act for principal.

(3) Agent's Authority in Emergency:-

An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss and would be done by a person of ordinary prudence in his own case, under similar circumstances.

4Q: Discuss the ~~agent~~ rights and duties of partners. Can a firm be liable for the wrongful acts of a partner?

Ans: Rights of partners:

- ① Right to take part in the conduct of the business. sec 12(a)
- ② Right to be consulted. sec 12(c)
- ③ Right of Access to Accounts.
- ④ Right to share in profits. Sec 13(b)
- ⑤ Right to interest on capital. 13(c)
- ⑥ Right to the use of partnership property.
- ⑦ Right to be indemnified. sec 13(e)
- ⑧ Right to retire. 13(i)

Duties of partners:

- ① To carry on business of the firm.
- ② Duty to indemnify for loss caused by fraud. (sec 10)
- ③ Duty to work without remuneration. sec 13(a)
- ④ Duty to indemnify for wilful neglect. sec 13(f)
- ⑤ Duty to share losses. sec 13(b)
- ⑥ Duty to account for any profit. sec 16(a)
- ⑦ Duty to account and pay for profits competing business. 16(b)

Liability for the wrongful Acts of a partner.

A firm can be liable for the wrongful acts of a partner. Where by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party or any penalty is incurred, the firm is liable therefore is liable to the same extent as the partner. A partner can bind the firm by means of his acts relating to partnership firm.

5Q:

what is unpaid seller? what are the rights of unpaid seller?

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Ans: The seller of good is deemed to be an unpaid seller:

- (a) When the whole of the price has not been paid or tendered;
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received, has not been fulfilled, and the condition by reason of the dishonour of the instrument or otherwise. Sec 45(1)

Rights of an unpaid seller

The right of an unpaid seller can be classified under two categories:-

- (A) Right against the goods
- (B) Right against the buyer personally.

(A) Rights Against the goods:

Where the property in the goods has passed to the buyer, but the seller has the following three rights against the goods sold:

- I Right of Lien
- II Right of Stoppage of goods in transit.
- III Right of resale

(B) Right against the Buyer:

The unpaid seller also has the rights against the buyer personally in addition to his rights against the goods. These are as under:-

- 1. He may sue for price [Sec 55(1)]
- 2. He may sue for damages for non acceptance of the goods [Sec 56]
- (3) He may sue for repudiation of the contract. [Sec 60]
- (4) He may sue for interest on the amount of price of goods. [Sec 61(2)(a)]

Q6:

Case study:

Fire breaks out in A's building. B, a passerby, brings some buckets of water and saves A's property from fire, intending to do gratuitously. Later on B claims compensation from A on the ground that A has enjoyed the benefit of his services. Will B succeed? Give reasons.

Ans:- According to section 70 of Indian Contract Act 1872 when a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefits there of, the latter is bound to make compensation to the former in respect of, or to restore the things so done or delivered. However in this problem, B saved A's property with the intention to do so gratuitously, hence A is not entitled to compensate B.

Before any right of action under Sec 70 arises, Three Conditions must be satisfied:-

- ① The thing must have been done lawfully in good faith.
- ② The person doing the act should not have intended to do it gratuitously.
- ③ The person for whom the act is done must have enjoyed the benefit of the act.