

Q.P. Code: 04061

[Time: 2 1/2 Hours] [Marks: 75]

Please check whether you have got the right question paper.

N.B: 1. All questions are compulsory.

Q.1 A Fill in the blanks (Any 8) (8 Marks)

- a) Under Criminal law, the punishment involves, penalty on imprisonment which is given on the basis of the degree of crime.
- b) The Constitution of India provides for a federal form of government with a fairly strong center which plays a dominant role.
- c) The words, ‘Habeas Corpus’ literally means, ‘having body’.
- d) Quasi contract is based on the theory of unjust enrichment.
- e) “Coercion” is the application of threat or force.
- f) The term, ‘Guarantee’ means, security against loss.
- g) The term, ‘delivery’ means, voluntary transfer of possession of goods from one person to another
- h) A negotiable instruments means, a promissory note, bill of exchange or cheque, payable either to order or to bearer.
- i) Inchoate means, ‘incomplete’ Instrument.
- j) An originator is the person who sends, generates, stores message.

B) State true or false (Any 7) (7Marks)

- a) The Constitution of India guarantees the people certain basic human rights and freedoms.

Ans.:True

- b) Custom is not a source of law-making.

Ans.:False

- c) The Indian Constitution is more flexible than that of England and less rigid than that of USA.

Ans.:True

- d) Void Agreements are not enforceable by law.

Ans.:True

- e) By discharge of contract, the rights and obligations of the parties come to an end.

Ans.: -True

f) Where a guarantee does not extend to a single transaction or debt, it is called as specific or simple guarantee.

Ans.: -False

g) Future goods are defined as goods to be manufactured or produced or acquired by the buyer after making the Contract of Sale.

Ans.: -True

h) A complaint for dishonour of cheque due to insufficiency of funds can be filled by the drawee or by the holder of the cheque.

Ans.: -True

i) The person, directed to pay is called as, ‘drawee’.

Ans.: -True

j) Information means a collection of facts, gathered by various means or communication to draw a conclusion.

Ans.: -True

Q.2 a) Explain the Indian legal system. Give the ‘Classification of Courts’ in India. (8 Marks)

Ans.: - Unlike its United States counterpart, the Indian justice system consists of a unitary system at both state and union level. The judiciary consists of the Supreme Court of India, high courts at the state level, and district courts and sessions courts at the district level.

The **Indian Judiciary** administers a *common law system* of legal jurisdiction, in which customs, precedents and legislation, all codify the law of the land. It has in fact, inherited the legacy of the legal system established by the then colonial powers and the princely states since the mid-19th century, and has partly retained characteristics of practices from the ancient and medieval times.

There are various levels of judiciary in India – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a strict hierarchy of importance, in line with the order of the courts in which they sit, with the Supreme Court of India at the top, followed by High Courts of respective states with district judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom

b) What are the principles of Natural justice? (7 Marks)

Ans.: - I) Meaning: Natural Justice is the basic rule of fairness in proceedings. Whole Constitution is based on the principles of natural justice. It is not a codified law but depends upon the merits of the case. It implies that every person is entitled to fair case irrespective of religion, caste, gender. It is based on the principle that law should not only be fair but also seem to be fair. Violation of principles of natural justice is also violation of Article 14 and 21.

II) Principles of Natural Justice:

1. No one should be a judge in his own cause
2. Rule of fair hearing (Hear the other side)

III) No one should be a judge in his own cause: It implies that the deciding authority must be fair and bias prevents a person from acting fair. It is human nature that if the personal interest of the judge is concerned, it is most likely that he would not be able to give fair judgment. Even if he doesn't act with bias but if to a common man it appears that there is likelihood of bias then the principle of fair hearing is violated.

OR

c) Explain the 'Right to Freedom' as per Article 19 of the Constitution of India. (8 Marks)

Ans.: - I) Meaning: - The rights to freedom are the most important fundamental rights guaranteed by the constitution of India. It is the prevalence of these freedoms that make democracy meaningful. The original constitution as adopted in 1949 guaranteed seven such freedoms. By the 44th amendment, the right to hold and dispose of property has been removed from the list of fundamental freedoms in 1978.

II) List of Rights to Freedom under Indian Constitution

Art. 19 of the constitution now provides six freedoms, namely:

1. right to freedom of speech and expression,
2. right to assemble peaceably and without arms,
3. right to form associations or unions,
4. right to move freely throughout the territory of India,
5. right to reside and settle in any part of the territory of India,
6. right to practice any profession or to carry on any occupation trade or business.

Each one of these six freedoms is subject to some restrictions. For rights can never be absolute. Individual rights must be reconciled with the interests of the community. It is logical that equal rights for all must mean limited rights for any. Hence, the state may impose 'reasonable restrictions' upon the exercise of any of these rights.

d) Explain the 5 types of Writs as per the Constitution of India. (7 Marks)

Ans.: - Anything that is issued under an authority is a writ. Orders, warrants, directions etc. issued under authority are examples of writs. There are five major types of writs viz. habeas corpus, mandamus, prohibition, quo-warranto and certiorari. Each of them has different meaning and different implications. In India, both Supreme Court and High Court have been empowered with Writ Jurisdiction. Further, Parliament by law can extend power to issue writs to any other courts (including local courts) for local limits of jurisdiction of such courts.

Q.3 a) Explain the Essentials of a Valid Contract. (8 Marks)

Ans.: - According to Sec. 10, "All agreements are contract if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not expressly declared to be void." Thus, Sections 2(h) and 10 of the Act state that there are some essential elements of a valid contract. If any of these elements is not satisfied by an agreement, it will affect the validity and will not form a valid contract.

On analyzing the contents of Sec. 10. It is revealed that the following are the essentials of a valid contract:-

1. Offer and acceptance.
2. Legal relationship.
3. Consensus-ad-idem.
4. Competency of parties.
5. Free consent.
6. Lawful consideration.
7. Lawful object.
8. Not declared to be void.
9. Certainty and possibility of performance.
10. Legal formalities.

b) Define, 'Acceptance'. Lay down the rules of a valid acceptance. (7 Marks)

Ans.: - Important legal rules regarding to a valid acceptance are as follows:

A contract, as already observed, emerges from the acceptance of an offer. Section 2(b) states that "A proposal when accepted becomes a promise" and defines 'acceptance' as "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted." Thus, 'acceptance' is the manifestation by the offeree of his assent to the terms of the offer.

A valid acceptance must be in conformity with the following rules:

1. Acceptance must be given only by the person to whom the offer is made:

An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract; it cannot be accepted by another person without the consent of the offeror. The rule of law is clear that "if you propose to make a contract with/1, then B can't

substitute himself for A without your consent.” An offer made to a particular person can be validly accepted by him alone.

Similarly, an offer made to a class of persons (i.e., teachers) can be accepted by any member of that class. An offer made to the world at large can be accepted by any person who has knowledge of the existence of the offer.

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OR

c) Explain the capacity of parties to enter into a contract. (8 Marks)

Ans.:-- Capacity to contract means the legal competence of a person to enter into a valid contract. Usually the capacity to contract refers to the capacity to enter into a legal agreement and the competence to perform some act. The basic element to enter into a valid contract is that she/he must have a sound mind.

Certain class of people is exempted from the category of people who are capable of entering into contract:

1. infants/minors;
2. insane;
3. people under the influence of drug;
4. bankrupt; and
5. enemy alien.

d) Define, ‘Fraud’. What are the essential elements of Fraud? (7 Marks)

Ans.:– Important essentials or rules relating to fraud are listed below:

1. The fraudulent act must be committed with an intention to deceive:

It is an important and essential element of a **fraud**. The act, which constitutes fraud, must be committed by a party, to a contract, with the intention to deceive the other party. This essential element has been emphasized in Sec17 of the Indian Contract Act.

It provides that fraud means and includes any act committed by a party, to a contract, with the intention to deceive another party or to induce him to enter into the contract. Thus, there must be intention to deceive the other party, or the intention to induce him to enter into a contract.

2. The fraudulent act must be committed with knowledge of its falsity:

It is also an essential element of fraud that the party committing the fraudulent act must be aware that his act is false. In other words, the fraudulent act must have been made with the knowledge of its falsity (i.e. without belief in its truth). A person making a false statement is not guilty of fraud if he honestly believes in its truthfulness.

3. The fraudulent act must have been committed by a party to the contract:

This essential elements has been emphasized in Section 17 of the Indian Contract Act, according to which, the fraud must have been committed only by the party to the contract or his authorized agent.

It may be noted that a fraud committed by a stranger (i.e., by a person who is not a party to the contract), does not affect the validity of the contract. [Reese V/s Smith (1869)]

4. The fraudulent act must have been committed upon the party to the contract or his agent:

It is also an essential element of fraud, that it must have been committed upon the party to the contract. If it is committed on a stranger, then it will not amount to fraud, and a contract shall not be voidable on account of fraud.

5. The fraudulent act has actually deceived the other party:

The party, induced by fraud must have relied upon the fraudulent statement and must have been actually deceived. In other words, fraud must have induced the other party to enter into a contract.

Q.4 a) What are the rights and duties of an Agent? (8 Marks)

Ans.: An agent owes the principal a number of duties. These include:

- a duty to undertake the task or tasks specified by the terms of the agency;
- a duty to discharge his duties with care and due diligence;

An agent must not accept any new obligations that are inconsistent with the duties owed to the principal. An agent can represent the interests of more than one principal, conflicting or potentially conflicting, only after full disclosure and consent of the principal. An agent must not usurp an opportunity from the principal by taking it for himself or passing it on to a third party.

In return, the principal must make a full disclosure of all information relevant to the transactions that the agent is authorized to negotiate.

An agent who acts within the scope of authority conferred by his or her principal binds the principal in the obligations he or she creates against third parties. There are essentially three kinds of authority recognized in the law: actual authority (whether expresses or implied), apparent authority, and ratified authority

b) Define, 'Bailment'. What are the essentials of Bailment? (7Marks)

Ans.: - I) Bailment Contracts: - A Contract where one party delivers goods to the other upon return basis to fulfill a specific purpose is called bailment contract. It includes two parties namely; bailer and bailee. The person who is delivering the goods is called bailer and the person to whom goods are delivered, is called bailee.

Example: A has handed over his fan to B for the purpose of repairs. It is bailment contract. A is bailer and B is bailee. Similarly X has handed over his dress Y for the purpose of washing. It is also bailment Contract where X is bailer and Y is bailee.

II) Types of Bailment Contracts:- The Bailement contracts are classified into Gratuitous bailments and Non – Gratuitous bailments.

A) Gratuitous Bailments: If there is only one directional consideration, it is called Gratuitous bailment. In here, the bailment contract is for the benefit of either the bailer or the bailee only.

Example 1: Mr. A, while going to abroad, has handed over his gold to this friend namely B for Safe custody. Here bailer only is getting benefited.

Example 2: Y has taken Scooter for X who is his friend for 1 day. Here only bailee is being benefited.

B) Non – Gratuitous bailments: If there is two directional consideration it is called Non-Gratuitous bailment. In here, the bailment contract is for the benefit of both parties.

Example: X has handed over his dress to B who is owner of a laundry for washing. At a charge of Rs. 10/-. Here both parties are being benefited.

OR

c) Define, 'Contract of Sale of Goods'. What are the essentials of a Contract of Sale of Goods? (8 Marks)

Ans.: - Sec.4 defines a contract of sale as 'a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price'. From the definition, the following essentials of the contract emerge:

- 1) There must be at least two parties
- 2) Transfer or agreement to transfer the ownership of goods.
- 3) The subject matter of the contract must necessarily be goods.
- 4) Price is the consideration of the contract of sale.

d) Distinguish between Sale and Hire Purchase. (7 Marks)

Ans.: - **The main points of distinction between the 'sale' and 'hire-purchase' are as follows:**

1. In a sale, property in the goods is transferred to the buyer immediately at the time of contract, whereas in hire-purchase, the property in the goods passes to the hirer upon payment of the last installment.
2. In a sale, the position of the buyer is that of the owner of the goods but in hire purchase, the position of the hirer is that of a bailee, till he pays the last installment.
3. In the case of a sale, the buyer cannot terminate the contract and is bound to pay the price of the goods. On the other hand, in the case of hire-purchase, the hirer may, if he so likes, terminate the contract by returning the goods to its owner without any liability to pay the remaining installments.
4. In the case of a sale, the seller takes the risk of any loss resulting from the insolvency of the buyer. In the case of hire purchase, the owner takes no such risk, for if the hirer fails to pay an installment, the owner has the right to take back the goods.
5. In the case of a sale, the buyer can pass a good title to a bonafide purchaser from him but in a hire-purchase, the hirer cannot pass any title even to a bonafide purchaser.
6. In a sale, sales tax is levied at the time of the contract whereas in a hire-purchase, sales tax is not leviable, until it eventually ripens into a sale (K.L. Johar & Co. vs. Dy. Commercial Tax Officer).

Q.5 a) What is ‘Digital Signature’? Explain the procedure for obtaining Digital Signature under Information Technology Act, 2000. (8 Marks)

Ans.: - I) Meaning: - A **digital signature** is a mathematical scheme for presenting the authenticity of digital messages or documents. A valid digital signature gives a recipient reason to believe that the message was created by a known sender (authentication), that the sender cannot deny having sent the message (non-repudiation), and that the message was not altered in transit (integrity).

Digital signatures are a standard element of most cryptographic protocol suites, and are commonly used for software distribution, financial transactions, contract management software, and in other cases where it is important to detect forgery or tampering.

Digital signatures employ asymmetric cryptography. In many instances they provide a layer of validation and security to messages sent through a non-secure channel: Properly implemented, a digital signature gives the receiver reason to believe the message was sent by the claimed sender. Digital signatures can also provide non-repudiation, meaning that the signer cannot successfully claim they did not sign a message, while also claiming their private key remains secret. Further, some non-repudiation schemes offer a time stamp for the digital signature, so that even if the private key is exposed, the signature is valid.

b) What are the offences under Information Technology Act, 2000? (7 Marks)

Ans.: - Sections 65:- Tampering with computer source documents

Sections 66:-Hacking with computer system

Sections 66B:- Receiving stolen computer or communication device

Sections 66C:- Using password of another person

Sections 66D: - Cheating using computer resource

Sections 66E:- Publishing private images of others

Sections 66F:- Acts of cyber terrorism

Sections 67:- Publishing information which is obscene in electronic form

Sections 67A:- Publishing images containing sexual acts

Sections 67B:- Publishing child porn or predating children online

Sections 67C:- Failure to maintain records

Sections 68:- Failure/refusal to comply with orders

Sections 69:- Failure/refusal to decrypt data

Sections 70:- Securing access or attempting to secure access to a protected system

Sections 71:- Misrepresentation:-If anyone makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any license or Digital Signature Certificate. Imprisonment up to three years, or/and with fine up to ₹100,000

OR

Q.5 Write Short Notes (any 3) (15 Marks)

a) Section 6 Cheque :- A Cheque is bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation: I. - For the purposes of this section, the expressions-

(a) **a cheque in the electronic** form means, a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;

(b) **a truncated cheque** means, a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II - For the purposes of this section, the expression clearing house means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

b) Promissory Note:- **Section 4 - Promissory note**:- A "promissory note" is an instrument in writing (not being a bank-note or a currency-note), containing an unconditional undertaking,

signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

c) Holder and Holder in due course: - **Holder** refers to a person; we mean the payee of the negotiable instrument, who is in possession of it. He/She is someone who is entitled to receive or recover the amount due on the instrument from the parties thereto. On the other hand, the **holder in due course** i.e. **HDC** implies a person who obtains the instrument bona fide for consideration before maturity, without any knowledge of defect in the title of the person transferring the instrument.

d) Auction sale: - **Auction sale** (In the case of sale by auction):-

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

e) Types of Goods :- **Goods**: - Every kind of movable property other than actionable things and money, includes stocks and share, growing crops and grass and things attached to or forming part of land which is agreed to be severed before the sale or under the contract of sale. Sec. 2(7)

a) Existing goods: - Goods which are in existence at the time of contract of sale. section-6

b) Future goods: - Goods which are to be manufactured /produced by seller after making contract of sale. section-2(6)

c) Specific goods: - Goods which are identified & agreed upon at the time of contract of sale has been made. Section-6(2)