

CA – Inter
Paper – 2 “Corporate and Other Laws”

M.M.: 35

Time allowed: 60 Mins.

Instructions: All Questions of Division A are compulsory.

Division A – Multiple Choice Questions

Marks

Case Scenario 1

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| Q.1 | (b) | The Bank can retain the goods till all the charges, including the interest, insurance and other charges are paid by Yukti. | 2 |
| Q.2 | (d) | No, the Bank has no right to retain the goods pledged with it, since the personal loan was not taken on the security of such goods. | 2 |
| Q.3 | (b) | Every bank has a policy to get the security insured on which it grants loan, so in this case also, the Bank for the purpose of protection of the goods took the insurance policy and paid the premium, so demand of the Bank is justified. | 2 |
| Q.4 | (b) | Pledge of goods. | 2 |

General MCQs

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| Q.5 | (b) | A non- obstante clause. | 1 |
| Q.6 | (a) | Grammatical, Logical. | 1 |

DIVISION B – DESCRIPTIVE QUESTION

Q. No. 1 is compulsory

Attempt any four questions from the Rest

Q.1 (a) Duties of the Bailee:

- As per Sec. 157 of the Indian Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.
- In the given question, Naresh’s employee mixed high quality sugar bailed by Vishal and then packaged it for sale. The sugars when mixed cannot be separated.

Conclusion: As Naresh’s employee has mixed the two kinds of sugar, he (Naresh) must compensate Vishal for the loss of his sugar.

(b) Rights of Holder in due course:

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- As per Sec. 9 of the Negotiable Instrument Act 1881, “Holder in due course” means any person who for consideration became the possessor of a negotiable instrument in good faith and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.
- Further, Sec. 120 says that no maker of a promissory note and no drawer of a bill or cheque and no acceptor of a bill for the honour of the drawer shall, in a suit thereon by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn. Thus, a holder in due course gets a good title to the bill.

Conclusion: In the given question, since Mr. Salim acquired the bill in good faith and for value, he becomes the holder in due course. Mr. Zahid cannot deny the original validity of

the bill towards Mr. Salim (he being holder in due course). Hence, Mr. Salim has right to recover the amount of bill from Mr. Zahid.

Q.2 Construction of references to repealed enactments:

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- As per Sec. 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.
- Also, in Gauri Shankar Gaur v. State of U.P., it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.
- As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in Sec. 2(18)(aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956.
- In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of Gauri Shankar Gaur v. State of U.P., for section 2(18)(aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956.

Q.3 Interpretation of the words “Means” and “Includes” in the definitions:

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The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to ‘mean’ such and such, the definition is ‘prima facie’ restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example:

Definition of Director [Section 2(34) of the Companies Act, 2013]: Director means a director appointed to the board of a company. The word “means” suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013]: Whole time director includes a director in the whole time employment of the company. The word “includes” suggests extensive definition. Other directors may be included in the category of the whole-time director.

Q.4 Revocation of Contract of guarantee:

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As per Sec. 131 of Indian Contract Act 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety’s estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety’s death.

In this question, ‘Surendra’ was surety for the transactions to be done between ‘Virendra’ & ‘Jitendra’ during the month of March’2021. ‘Virendra’ supplied goods of ₹ 30,000, ₹ 20,000 and of ₹ 40,000 on 01.03.2021, 03.03.2021 and 10.03.2021 respectively. ‘Surendra’ died in a road accident but this was not in the knowledge of ‘Virendra’. When ‘Jitendra’ defaulted in payment, ‘Virendra’ filed suit against legal heirs of ‘Surendra’ for recovery of full amount i.e. ₹ 90,000.

On the basis of above, it can be said in case of death of surety (‘Surendra’), his legal heirs are liable only for those transactions which were entered before 05.03.2021 i.e. for ₹ 50,000. They are not liable for the transaction done on 10.03.2021 even though Virendra had no knowledge of death of Surendra.

Further, if the worth of the estate of deceased is only ₹ 45,000, the legal heirs are liable for this amount only.

Q.5 According to section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof. **4**

The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. [Section 57]

In the given case, cheque was indorsed properly but not delivered to indorsee i.e. ‘Rehansh’, Therefore, ‘Rehansh’ is not eligible to claim the payment of cheque.

Q.6 Use of the word ‘May’: **4**

- The word ‘shall’ is used to raise a presumption of something which is mandatory or imperative while the word ‘may’ is used to connote something which is not mandatory but is only directory or enabling.
 - However, sometimes Word ‘may’ have a mandatory force if directory force will defeat the object of the Act. However, sometimes the words “may and shall” can be interpreted interchangeably depending on the intention of the legislator.
 - Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word “may” used in section should be considered as mandatory or directory.
 - In the given case, it can be said that the word “may” should be taken as mandatory force, because the law will never allow the formation of company with unlawful object.
 - Here the word used “may” shall be read as “shall”. Usage of word ‘may’ here make it mandatory for a company for the compliance of section 3 for its formation.
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