**Biyani Institute of Science & Management**

**Model Answer Paper**

**MBA IV Sem**

**Business Law**

**Module-I**

**Indian Contract Act, 1872**

**Q.1 “A contract is an agreement enforceable by law”. Comment the statement and describe the essentials of a valid contract.**

Ans. The statement is true, because it is also defined under Section 2(h) of Contract Act, 1872. “An agreement enforceable by law is a contract.” If we analysis this statement, if reveals that – (i) a contract is an agreement and the agreement is enforceable by law. This can be explained by the following formula i.e.-

 Contract = Agreement + enforceable by Law

 but agreement will be enforceable by if the following essentials fulfilled :

 **Essentials of a contract:**

(i) There must require at least two parties i.e. Proposer and Proposee. They may be offerer and offeree.

 (ii) Agreement is also essential. It is the foundation of contract. It should not cross offer and counter offer.

 (iii) The intention of contract is to create legal relations, certain social, domestic and political agreements do not create contractual relations.

 (iv) Contractual capacity of the parties also required such as they are major sound and not disqualified by law (Section 11).

 (v) Consent of the parties is necessary under Section-13. It is also known as consensus ad-idem or unanimous consent is required between the parties.

 (vi) Free consent is also necessary (Section 14). It is

 (a) Coercion (15)

 (b) Undue influence (16)

 (c) Fraud (17)

 (d) Mis-representation (18) and

 (e) Mistake (20, 21, 22)

 (vii) Consideration – ‘quid pro-quo’ something in return of something to promisor given by promisee, except some exceptions.

 (viii) Lawful object and consideration – except-section 23. It will be unlawful –

 (a) If it is forbidden by Law; or

 (b) If it defeats the provisions any law; or

 (c) If it is fraudulent; or

 (d) If it involves or implies injury to the person, or damage to the property of another person.

 (e) If the court regards it as immoral or

 (f) If the court regards it against public policy

 (ix) Certainty of Meaning: If agreements are not clear, uncertain then it will be void the terms and conditions must be clear.

 (x) Agreements must be possible to perform it should be physically and legally possible to perform then it will be contract.

 (xi) Compliance of legal formulaties is – Such as agreements must be written, certified with evidence, and registered under certain cases required by law of the land.

 (xii) Agreement not declared void – under certain sections of contract-act these are 13 as void agreement they cannot become contract.

**MODULE-I**

**Q.2 What do you mean by Bailment and Pledge, distinguish between the two.**

Ans. Indian Contract Act, 1872, deals with the provision of Bailment Section 148 to 171 and provision of pledge relates to section 172 to 182.

 Meaning of Bailment means when the goods are delivered for a temporary purpose to another for gratuitous or non-gratuitously for accomplishing a task, and returned the goods. It is called Bailment. It is defined according to Section 148, ‘Bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them.” There are two parties under these contracts Bailor and Bailee. There may be sub-bailee.

 The term pledge is also called as Pawn. ‘It is concern with Bailment of goods as Security for payment of a debt or performance of a promise is called ‘Pledge’ or Pawn Sec. (172)

 There are two parties under a contract of pledge known as ‘Pawnor’ and “Pawnee”. Pawnor pledges goods to Pawnee for security of goods.

**Distinction between Bailment and Pledge**

|  |  |  |
| --- | --- | --- |
| **Basis of Comparison** | **Bailment** | **Pledge** |
| 1. Purpose | The Bailment may be for any purpose such as use, safe custody etc. | Pledge is only for purpose of security for payment of a debt. |
| 2. Right to use | Bailee may use as per conditions of bailment, use the goods bailed. | Pledgee cannot use the goods pledged as per desire. |
| 3. Right to Sell | They cannot sell the goods bailed to him. | A pledgee has a right to sell the goods pledged if default is made by the pawnor. |
| 4. Consideration | There may be or may not be consideration in bailment. | In pledge it is always consideration. |
| 5. Discharge Contract | A contract of bailment is discharged when the purpose is completed or after specified time. | A contract of pledge is accomplished with the payment of debt or the performance of sale of security. |

**Module-II**

**Q.3 Who is Minor? Can a minor be partner in a firm? State the law relating to rights and liabilities of a minor partner.**

Ans. Minor is a person who is generally below the age of 18 years. If the property of the minor is kept under courtwardship or court as a guardian, he is minor below the age of 21 years.

 Can a minor be partner in a firm ?

 Partnership is created by an agreement (Section 5) because minor has no contractual capacity hence, he cannot become partner in a partnership firm. According the Supreme Court of India a minor can never be full-fledged partner even in an existing firm. [CIT v/s Dwarkadas Khaitan & Co. AIR (1961) Sec. 680]

 Minor can be admitted in a firm unanimously in profits only (sec. 30) or if he becomes major wants to join the firm then he can become as partner in firm.

 **Rights of minor before attaining majority:**

(i) Minor can receive share in benefits of the firm as agreed upon. Sec 30 (2)

 (ii) Has also rights to get the agreed share of the property of the firm. Sec. 30 (2)

 (iii) Have access to and inspect books of account of the firm.

 (iv) Minor can also take copy of any books of account of the firm [Sec. 30 (20)]

 (v) To sue partners-when severing his connection with the firm.

 (vi) Right to become or not to become a partner in the firm after attaining majority. Sec. 30(5)

 **Liabilities of minor before becoming majority :**

(i) A minor has no personal liability for acts done of the firm. Sec. 30 (3)

 (ii) Minor’s shall is liable to the extent of the property or profits of the firm. Sec. 30(3)

 (iii) Liability in case of Insolvency – A minor is not liable even in case of insolvency. Sec. 30(4)

 (iv) To give public notice on attaining majority if he elects not to become partner of the firm. Sec. 30(5)

**Sale of Goods Act,1930**

**Module-III**

**Q.4 Define contract of sale. What are the essentials of contract of sale?**

Ans. According to Sale of Goods Act, 1930, Section 4(1) defines. “A contract of Sales of Goods is a contract whereby the Seller transfers, or agrees to transfer the property in goods to the buyer for a price”.

 The contract of Sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. It also includes transfers or agrees to transfer of ownership of goods to buyer for consideration or price.

 **Essentials of contract of sale-**

(i) Two parties are required in a contract of sale. They should be separate persons. They are buyer and seller.

 (ii) **Goods:**Which is defined 2(7) “goods means every kind of movable property other than actionable claims and money, and includes stock and share, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

 (iii) **Price:**For contract of sale price is essential otherwise it will be treated gift. If goods are given for goods it called barter. It is paid in money only, either partly or fully.

 (iv) Transfer of goods is required from Seller to the buyer. He transfers or agrees to transfer either special goods or general property.

 (v) Free consent of the parties is necessary. It is without coercion, undue influence, fraud, misrepresentation and mistake.

 (vi) Contract of Sale may be conditional or unconditional.

 (vii) Contract of sale includes sell as well as contract of sale. Sec. 4(1)

 (viii) All the essential of elements of contract are also allowed in a contract of sale.

**Negotiable Instrument Act, 1881**

**Module-IV**

**Q.5 What are kinds of negotiable instrument?**

Ans. The term negotiable instruments includes two terms i.e. Negotiable means transferable from one person to another. Instruments means a written paper or documents creating a right of person to claim certain money by means transfer of instrument.

 **Kinds of Negotiable documents –**

These may be classified as follows:

 (i) **Kinds of Statute:** These are three i.e.

(a) Promissory Note (P/N)

 (b) Bill of exchange (B/E)

 (c) Cheque [Section 13(i)]

 (ii) **Kinds by customs or usage:**

 In India according to custom or usage of business they are as follows:

 (a) Hundies

 (b) Government promissory note, treasury bills

 (c) Bank drafts/pay order

 (d) Share warrants

 (e) Bearer Debentures

 (f) Dividend warrants etc.

 These are not recognised as N.I.

 (a) Railway Receipt (RR)

 (b) Delivery order for goods

 (c) Bill of lading

 (d) Dock Warrant

 (e) Money Order

 (f) Postal Order

 (g) Share Certificate

 (h) Deposit Receipt

 (i) Mate’s receipt

 (j) Letter of credit

 (k) Life Insurance policy

 (l) Pay warrants

**Module – V**

**Case Study**

A public limited company has following members :

(i) Directors and Relatives : 80

(ii) Employees : 80

(iii) Employees who were allotted shares during their employment as employees : 80

(iv) Five couples joint share holders (20x2) : 40

(v) Others : 80

 **Total : 360**

**Can such company be converted in Private Company?**

**Solution:** Yes, this company can be converted in a private company because it fulfills the condition of maximum number of members. The present and former members are not included in computing the member. Similarly, joint share holders are also treated as single member.

Therefore, number of members comes to only 80 + 20 + 80 = 180. Hence it may be converted into private company, if it fulfills their requirements of the Section 2(68).