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19 (II) SPCN

2021

**SPECIAL CONTRACT**

Full Marks : 80

Time : Three hours

***The figures in the margin indicate full marks for the questions.***

I. Answer the following : (Each question carries 1 mark)

1. When the principal debtor makes a default in the performance of his duty and on such a default, the surety makes the necessary payment or makes performance of all what he is liable for, he becomes invested with all the rights which the creditor had against the principal debtor. In other words, the surety steps into the shoes of the creditor. This right is known as \_\_\_\_\_.

*(Right of Subrogation/ Right of Guarantee)*

Contd.

2. When a person keeps his goods in the premises of another person but he continues to have the control over them, this is sufficient delivery for being considered to be bailment.

*(True/False)*

3. An agent who guarantees the performance of the contract by the third person on the payment of some extra commission is called \_\_\_\_\_.

*(Factor / Del Credere Agent)*

4. An agent who is minor or otherwise incompetent to contract is capable of creating a valid relationship between his principal and a third person.

*(True/False)*

5. 'Goods' under *Sale of Goods Act, 1930* includes every kind of movable property excluding \_\_\_\_\_.

*(stock and shares / actionable claims)*

6. Stipulations that are collateral to the main purpose of the contract are known as \_\_\_\_\_.

*(warranty / condition)*

7. An act done by a partner of a partnership firm in an emergency to protect the firm from loss as would be done by a person of ordinary prudence binds the whole firm. (Yes/No)
8. In certain cases, a person who is not a partner in the firm may be deemed to be a partner or held out to be a partner for the purpose of his liability towards a third party. This is known as \_\_\_\_\_.  
(Law of Estoppel/Doctrine of Holding Out)
9. Limited Liability Partnership (LLP) is a separate legal entity under Limited Liability Partnership Act, 2008.  
(True/False)
10. Every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership \_\_\_\_\_.  
(the agent of the limited liability partnership, but not of other partners/  
the agent as well as principal of the limited liability partnership)

II. Answer the following : (Each question carries **2** marks)

1. Contract of Indemnity
2. Ratification under contract of agency.
3. *Nemo dat quad non habet*
4. Essentials of Partnership
5. Limited Liability Partnership

III. Answer **any five** : (Each question carries **12** marks)

1. *Benefit to the principal debtor is sufficient consideration for the surety.* Discuss this statement with appropriate illustrations.

‘A’ becomes surety to ‘C’ for ‘B’s’ conduct as a manager in ‘C’s’ bank. Afterwards, ‘B’ and ‘C’ contract, without ‘A’s’ consent that ‘B’s’ salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. ‘B’ allows a customer to overdraw, and the bank loses a sum of money. Is ‘A’ discharged from his suretyship ? Use suitable illustrations and legal provisions to support your answer.

'A' lends a horse to 'B' for his own riding only. 'B' allows 'C', a member of his family, to ride the horse. 'C' rides with care, but the horse accidentally falls and is injured. Is 'B' liable to make compensation to 'A' for the injury done to his horse ? Discuss. 4+4+4=12

2. Can a Principal be bound by the law of Estoppel ? Discuss.

'A', an agent for the sale of goods, having authority to sell on credit, sells to 'B' on credit, without making the proper and usual enquiries as to the solvency of 'B'. 'B', at the time of such sale, is insolvent. Has 'A' breached his duty as an agent ? In this regard, discuss all the duties of an agent in a contract of agency. 4+8=12

3. 'A' purchased milk from a milk dealer 'B' for his family's use. The milk contained typhoid germs, A's wife was infected by it and she died. A brings an action against B. Discuss his liability.

*Risk prima facie passes with the property.* Elaborate on this statement in the context of *Sale of Goods Act, 1930.* 4+8=12

4. Discuss the various modes of dissolution of partnership. 12
5. Mrs. S, a widow owned two cottages. She called at the office of ABC Co., a firm of solicitors. She wanted to consult this firm regarding selling her cottages as she was not satisfied with the income she was getting from the two cottages. She was attended by the managing clerk of the company who advised her to sell the cottages and for the purpose asked her to sign two documents which were supposed to be sale deeds. The managing clerk had fraudulently prepared the two documents as gift deeds in his own name. He then disposed of the said property and misappropriated the money. Decide on the liability of the firm, ABC Co. for the acts of the managing clerk using relevant legal provisions.

Differentiate between Partnership and Company. 6+6=12

6. How is a partnership firm different from limited liability partnership firm ?

Write detailed notes on :

- (i) Liability of an LLP or any of its partners in case of fraud and  
(ii) Whistleblowing under Limited Liability Partnership Act, 2008.

6+(3+3)=12

7. Define bailment. Discuss the rights and duties of a bailee. Is there any difference between bailment and pledge ?

2+8+2=12

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