CAP-I New-M.Law-Dec.2013
Suggested Answer

Roll No……………. **Maximum Marks - 25**

Total No. of Questions - 2 **Total No. of Printed Pages -1**

Time Allowed - 1 Hour

Marks

Attempt all questions.

1. Answer the following questions: **(2×5=10)**

   a) What are the matters to be set out in an application for the registration of a firm as per the Partnership Act, 2020?

   b) Discuss the various modes of dissolution of a partnership firm.

Answer:

a) Section 6 of the Partnership Act, 2020 prescribes the particulars to be mentioned in Application for Registration of Partnership.

In order to register a firm, the matter to be set out in details, along with the fees as prescribed in Schedule- 2(a) of Partnership Act 2020 and a copy of the agreement concluded between partners, if any, are as follows;-

(a) Full Name of the firm
(b) The Principal place of business of the firm,
(c) The objectives of the firm including the short description of the nature of the goods or services, as the case may be, which the firm intends to run the business,
(d) The full name, surname and permanent address of the partners,
(e) The matter of restriction imposed on the power of a partner, if any,
(f) The types of partnership and the capital subscribed by each partner,
(g) The name of a partner or partners, who represent the firm,
(h) The mode to share the profit and loss between /among partners,
(i) The mode to calculate the profit of a firm.
(j) Any other matters prescribed by the concerned Department stating which should be set out in the application.

b) The term dissolution in relation with partnership is used in two senses, viz. dissolution of partnership and dissolution of partnership firm. If it only involves a change in the relation of the partners, then it is called as dissolution of partnership. Thus, the retirement of a partner from a firm does not dissolve the firm. In other hand, dissolution of firm means the complete breakdown or extinction of the relationship of partnership between all the partners of a firm.

Modes of dissolution of a firm:
Chapter vi of the Partnership Act, 2020 prescribes the provision regarding dissolution of Partnership. According to it, a partnership firm may come to an end or terminated by one of the following ways:

a) **By agreement (Section 29):** A firm may be dissolved with the consent of all the partners or in accordance with a contract between them. The contract of the dissolution of the firm may be express or implied.
b) **By notice (Section 30):** Where the partnership is at will of not constituted for a specific term, the firm may be dissolved by any partner at any time giving notice to all the other partners of his intention to dissolve the firm. The firm, in such a case, is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.
c) **By any one of the partner (Section 31):** Any partner can cause to dissolve the partnership firm and at the suit of partner the court can, at any time, dissolved a firm on the following grounds:
   i. **Insanity:** Where a partner has become of unsound mind, the court may dissolve the firm on the petition of any of the other partners or by the next kin of the insane partner.
   ii. **Permanent incapacity:** Where a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as a partner, the court may dissolve the firm.
   iii. **Misconduct:** Where a partner, other than the partner suing, is guilty of misconduct and it is likely to affect prejudicially carrying on of the business the court may dissolve the firm.
   iv. **Inability to pay debt or Transfer of interest:** If any other partner fails to pay the amount to be paid to the firm or, if he/she transfers his/her interest in the firm to any third party without consent of all other partner.
d) **By lapse of time (Section 32):** If the partnership firm was constituted for a specific period of time, it comes to an end immediately after the termination of such time.
e) **By happening of certain events (Section 33):** Subject to the contract between the partners, a firm if dissolved immediately after-
   i. The completion of the particular adventure or adventures, if the firm is constituted for the execution thereof (Section 32);
   ii. The date of partner;
   iii. The adjudication of a partner as an insolvent; and
   iv. The expiry of the term for which the firm was constituted.

2. Answer the following questions:

   a) What is pledge? Discuss the legal effect of pledge by non-owner.

   b) What is a sale of goods? Explain the rules regarding the transfer of property in goods from seller to buyer. **(2+3=5)**

   c) Describe the rules regarding the consideration. **5**

Answer:

a) **Meaning of pledge:**

As per Section 35 (1) of the Contract Act, 2056 pledge means a delivery of goods, documents or valuables from one person to another as a security for the repayment of a debt or the performance of a duty or a legal obligation. It is a special type of bailment where the goods or documents are delivered for only one purpose i.e. as a security for the repayment of a debt or the performance of a legal duty. There are two parties in pledge, namely, the pledger/pawnor and pledgee/ pawnee. Therefore, it is a contract between pawnor and pawnee where the goods or documents is delivered by the pawnor to the pawnee as a security for the repayment of a debt or the performance of a legal obligation.

Pledge by non-owner:
Section 38 of the Contract Act, 2056 has mentioned the consequences where the goods is pledged by the person without title. The general rule enshrined in the section is that where a pledge is made by non-owner, is void i.e. a non-owner cannot make a valid pledge. As the pawnee can sell the goods in case of default by the pawnor, it becomes hardship to the true owner where the goods is pledged by a fraudulent non-owner. To protect the ownership or the true owner the law simply states that the pledge by non-owner has not legal effect or void from the beginning. There are some exceptions to the rule. That means, in the following exceptional cases pledge becomes valid even it is made by a non-owner. These cases are: -

1. **Pledge by mercantile agent:** He is a person to whom goods are entrusted by the owner of goods for the purpose of selling them and therefore, he has not pledge the goods. Where goods is pledge him, it is a valid pledge, however, he is a non-owner. The pledge becomes valid if –
   i. The goods are in his custody by the consent of the true owner.
   ii. The goods are delivered during the business hour.
   iii. The pledgee has acted in good faith or without having knowledge of the want of authority from which he derives his authority.

2. **Pledge by a person having title by estoppel:** where the owner by his conduct or by act or omission leads the pledgee to believe that the pledgor has authority to pledge and induces to receive the goods as a pledge, he is stopped from denying the fact of want of authority of the pledgor to make a valid contract though the pledgor was not the true owner.

3. **Pledge by a person in possession of goods under a voidable contract:** Where a person obtains possession of goods under a voidable contract, the pledge created by him is valid provided-
   i. The contract has not been rescinded before the contract of pledge.
   ii. The pledgee acts in good faith and without notice of the pledgor's defect of title.

4. **Pledge by co-owner in possession of goods:** Where a goods is in possession of one joint owner by the consent of other co-owners, he may create a valid pledge if the pledgee deals in good faith.

5. **Pledge where Pledger has a limited interest:** Where a person pledges the goods in which he has only a limited interest, the pledge is valid to the extent of that interest. Therefore, a finder of lost goods can pledge them to the extent of his interest.

6. **Pledge by a liquidator or an official receiver:** A liquidator or an official receiver can make a valid pledge of goods of a company or true owner in liquidation process and the pledge made by him is valid one.

b) **Meaning of sale of goods:**

Literally, the term sale refers transfer of ownership from one to another and goods refer any movable property other than land and attached to the land. Therefore, in simple words, the expression sale of goods refers the transfer of ownership in goods from one to another. In fact, it is a contract between seller and buyer where the seller transfers or agrees to transfer ownership in goods in the name of buyer for price. If the ownership in goods is transferred from seller to buyer for price or monetary consideration, it is called sale of goods. For the contract of sale of goods, there must be:

1. Seller and buyer.
2. Goods.
3. Transfer of ownership/property.
4. Price.
5. Sale or agreement to sell.

Rules regarding the transfer of ownership:

Sub-section 1, 2, 3, 4 and 5 of Section 48 of the Contract Act 2056 has mentioned the various rules or provisions to determine the question whether there is transfer of ownership or not in the goods. The provisions of the Contract Act, 2056 regarding the transfer of property in goods can be described as under: -

1. **Unascertained goods:** Where there is a contract for unascertained goods, the ownership in such goods does not transfer until and unless the goods is ascertained.

2. **Specific/ascertained goods:** Where there is a contract for ascertained goods, the ownership in such goods transfers at the time when the parties have intended. In other words, in such goods the property does transfer at the option of the parties i.e. the parties are free to fix the time, place, conditions and circumstances for the transfer of ownership in the goods.

3. **Absence of expressed/implied intention:** Where there is a contract for ascertained goods but there is no expressed/implied intention as to the transfer of property in goods, the ownership does pass as per the following rules:

   a) **Ascertained goods in a deliverable state:** Where the ascertained goods is in a deliverable state, the ownership transfers immediately when the contract is made irrespective of payment or delivery of goods.

   b) **Ascertained goods not in a deliverable state:** If the goods, at the time of contract, is not in a deliverable state because of some works, e.g. printing, packaging, leveling, pricing, weighing etc. remain to be put the goods in a deliverable state, the property in such goods passes from seller to buyer when-

- **i.** The goods is put in a deliverable state after completing the remaining works as mentioned above and;
- **ii.** The seller informs to the buyer that he has completed the works and thus the goods is in a deliverable state.

4. **Contingent goods:** Where there is a contract for contingent goods, the property in such goods does transfer on the happening or non-happening of the uncertain future event mentioned at the time of agreement.
5. **Future goods:** Where there is a contract for future goods, the property in such goods transfers only when the goods takes place as per the agreement and such is communicated by the seller to the buyer.

c) **Essential elements of a valid consideration**

Consideration means to get something in exchange. i.e. quid-pro-quo. It is also known as the price paid for promise. If there is no consideration it cannot be enforceable by law. Thus, a contract without consideration is void. i.e. no consideration no contract is the rule of law.

Following are the essential elements of a valid consideration;

i. Consideration must move at the desire of the promisor

An act shall not be a good consideration for the promise unless it is done at the desire of the promisor. So the act or abstinence must be done of promised to be done at the desire of the promisor. It is not necessary that the promisor himself should be benefited by the act, but his desire is essential.

ii. Consideration may move from the promise or any other person

Consideration can be given by the promisee or any other person. As long as there is a consideration it is not important who has given it. Therefore, a stranger to consideration can sue on a contract provided he is not a stranger to contract. This is known as doctrine of constructive consideration.

iii. Consideration must be of some value in eye of law

Consideration means act, abstinence or promise on the part of the promisee or any other person which has been done at the desire of the promisor. But this does not mean that even a worthless act by the promise at the desire of the promisor will make a good consideration. Consideration shall be something which not only the parties regard but the law can also regard as having some value.

iv. Consideration need not be adequate

An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate. This means that consideration need not be adequate to the promise. The adequacy of consideration is for the parties to decide at the time of making the contract, not for the court when it is sought to be enforced.

v. Consideration may be an act or abstinence or promise

Consideration may be a promise to do something or not to do something. So it may either positive or negative. Consideration need not always be doing some act, it can be not doing an act also.

vi. Consideration must be lawful

All agreements are contracts that are for a lawful consideration. So consideration should be lawful, otherwise the agreement is void. If it is forbidden by law, or is of such a nature that if allowed it would defeat any law, is fraudulent, involves injury to the person or property of another, court regards it as immoral or opposed to public policy.

vii. Consideration must be real and not illusory or impossible

Consideration must be real and not illusory, whether adequate or not. So long as the consideration is not unreal it is sufficient if it be of slight value only. It must not be illusory or impossible. Real consideration is one which is not physically or legally impossible. Illusory means it may give the impression of a consideration which is not actually there.

viii. Pre-existing obligation can not be considered as consideration

There is no consideration, if it is something which promisee is already bound to do.