

CA



THE INSTITUTE OF
CHARTERED ACCOUNTANTS
OF SRI LANKA

SUGGESTED SOLUTIONS

16304 – Commercial Law and Corporate Law

CA Professional (Strategic Level I) Examination
December 2012

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SRI LANKA

Answer No. 01

(a)

- 1) For a contract to be valid parties must fulfill the basic requirements, Eg:- Offer, Acceptance, Consideration, Legality, Intention and Capacity of the parties.
- 2) Offer is the willingness of a party to enter into a contract, and the offer must be communicated to the offeree by the offeror.
- 3) Once the offeror makes an offer to the offeree and if the offeree accepts, it will form a valid acceptance.
- 4) And also if the offeror states that he will keep the offer open for a specific period he has to keep such offer open for that particular period.
- 5) Before acceptance the offeror can withdraw or revoke his offer, but such withdrawal or revocation has to be communicated to the offeree.
- 6) The communication of such revocation of the offer to the offeree, can be done either by the offeror by or any other person.

E.g. In DICKINSON v DODDS

Dodds offered in writing to sell some property to Dickinson, the offer 'to be left over until Friday'. Dickinson decided to buy the property, but before he could accept he heard on Thursday from a third party that Dodds had sold the property to someone else. Dickinson immediately accepted the original offer, and later sought an order to enforce the sale on the grounds that Dodds had not expressly revoked the offer made to him, thus leaving it opened to him to accept.

Held- Court decided that the revocation was properly communicated to the offeree before acceptance.

- 7) In the question, on 1st January 2012 Peter has made an offer to Jane to sell his motor car for Rs 2.5Mn. and he has agreed to keep the offer open for 5 days.
- 8) It is clear that there is a valid offer which is opened for 5 days.
- 9) What is required is to see whether there is a proper revocation of the offer, and whether such revocation has been properly communicated to the offeree prior to the 5 days period.
- 10) On 2nd January 2012, Peter has informed Kevin, a trusted friend of Jane's, that he is selling the vehicle to Richard, and this was communicated to Jane by Kevin on the same day.
- 11) Since it has been properly communicated to Jane we can say that there is a proper revocation from the offeror. (Dickinson v Dodds)

- 12) Thereafter Jane cannot accept the offer since it is already revoked by the offeror, and revocation of which had been properly communicated to her.
- 13) Therefore Jane cannot maintain any case against Peter for a breach of contract for not selling the vehicle to her for Rs. 2.5Mn.

(7 marks)

(b)

- 1) If Jane did not receive any message from Kevin, there is **no proper revocation** communicated to Jane from the offeror, Peter.
- 2) In such a scenario if Jane has accepted the offer before the expiry period of 5 days there is a **valid acceptance**.
- 3) Accordingly since there is a valid acceptance, Jane **can file action** against Peter for breach of contract.

(3 marks)

(Total 10 marks)

Answer No. 02

- (a) As per the facts given in question, Lal clearly has acted contrary to the expressed instructions of the principal, Stanley. It is established clearly that an agent is under a duty to perform the agreed undertaking according to the instructions of the principal.

Failure to carry out any such instructions will leave the agent open to an action for a breach of contract.

Turpin Vs Bilton – An agent was held liable for the loss sustained by, due to his failure to insure his principal's ship prior to its sinking.

Lal is therefore responsible for the principal Stanley, for breach of the contract.

Therefore, Lal is liable to make good the loss sustained by Stanley, and Stanley will be entitled for a minimum amount of Rs 5,000/- as damages, as the measure of damage in Law of Contracts is the difference between what was received and what should have been received had the contract been completed properly.

From the buyer's point of view he may not be aware of the internal arrangements between Stanley and Lal. Therefore the buyer Bernad, will not be liable to pay anything to Stanley. Nor can Stanley make the contract void since the buyer is an innocent party.

(5 marks)

- (b) Agents are under a general duty, which prevents them from making any secret profit and from taking any undue benefits.

An agent, who uses his position as an agent to secure a financial advantage for him without full disclosure to his principal, is in breach of a fiduciary duty.

Failure to disclose the profit will entitle the principal to claim the profit for himself.

In the situation under consideration, there does not appear to be sufficient evidence to accuse Bernad for making of any undue influence to Lal. Therefore, Stanley cannot repudiate the contract with Bernad.

However, it is clear that Lal has made a secret profit from the transaction, and Stanley would be entitled to recover that from Lal.

(5 marks
(Total 10 marks)

Answer No. 03

(a)

- The crossing of cheques, is a special security feature used by the banking system.
- All crossed cheques should be deposited into a bank account.
- This will give an opportunity for the actual owner to identify as to who has deposited the cheque to an account if a cheque is misplaced.
- Therefore crossed cheques cannot be encashed over the counter, and they have to be deposited to a bank account.
- But a crossed cheque can be encashed over the counter if the drawer first cancels the crossing and then the payee establishes his/her identity to the satisfaction of the Bank.

(4 marks)

(b)

- (i) An “Account Payee” cheque can be collected only to the account of the payee of the cheque and not to any other account. In this scenario it should be deposited to Radha Selvam’s personal account which is in his name.

Radha cannot deposit the cheque drawn to his name to the account of “Auris (Pvt) Limited”. Assorted Bank will not accept the cheque to the company’s account. In general the collecting bank is responsible for the true owners for all the cheques it collects.

- (ii) No Bank will accept a post-dated cheque for immediate deposit. This cheque can be deposited into a bank account on or after 1st February 2013 only.

(6 marks)

(Total 10 marks)

Answer No. 04

- (i) Compulsory arbitration is one where the parties are required to accept arbitration without any willingness on their part.

Compulsory arbitration is a non-binding, advisory dispute resolution process.

This is a process in which one or more arbitrators hear arguments, weigh evidence and issue a non-binding judgment on the merits after an expedient hearing.

The arbitrator's decision addresses only the disputed legal issues and applies legal standards. Either party may reject the ruling and request a trial de novo in court.

In the case of industrial disputes, compulsory arbitration leaves no scope for strikes and lock-outs; it deprives both the parties of their very important and fundamental rights.

(5 marks)

- (ii) Instances where a partner can *apply to court for dissolution of* the partnership business are.-

(a) **Insanity of Partner:** - On the application of any of the partner, court may order for the dissolution of the firm if a partner has become of an unsound mind.

(b) **Incapacity of Partner:** - If a partner has become permanently incapable of discharging his duties and obligations then court may order for the dissolution of firm on the application of any of the partner.

(c) **Misconduct of Partner:** - If any partner other than the partner suing is responsible for any loss to the firm, then the court may order for the dissolution of the firm.

(d) **Constant breach of agreement by partner:** - The court may order for the dissolution of the firm if the partner other than the suing partner is found guilty for constant breach of agreement and it becomes impossible to continue the business with such partner.

(f) **Continuous Losses:** - The court may order for dissolution if the firm is continuously suffering losses and there is no more capital available for the future growth of the firm.

(g) **Just and Equitable:** - The court may order for dissolution on any other ground which the court thinks is just, fair and equitable. Eg:- loss of total confidence between the partners.

(5 marks)

- (iii) If, an unpaid seller has exercised the right of re-sell and sell the goods, the buyer obtains a good title to them as against the original buyer.

The seller has a right to resell the goods-

- where the goods are of a perishable nature;

(6)

- where it gives notice and the buyer does not within a reasonable time pay or tender the price;
- where the seller expressly reserves a right of resale in case the buyer makes a default.

If the seller should sustain any loss on the resale, he can recover it from the buyer as damages for breach of contract.

If he should make a profit on the resale, then he is entitled to keep the profit.

[Section 48 of the Sale of Goods Ordinance]

(iv) The objectives of the Electronic Transactions Act are : (5 marks)

- (a) To facilitate domestic and international electronic commerce by eliminating legal barriers and establishing legal certainty;
- (b) To encourage the use of reliable forms of electronic commerce;
- (c) To facilitate electronic filing of documents with the government.
- (d) To promote efficiency in the delivery of government services by means of reliable forms of electronic communications;
- (e) To promote public confidence in the authenticity, integrity and reliability of data messages, electronic documents, electronic records or other communications.

(5 marks)

(v) The Objects of the Consumer Affairs Authority are as follows :

1. To protect consumers against the marketing of goods or providing services which are harmful to the lives & property of consumers.
2. To protect consumers against unfair trade practices
3. Guarantee that consumers' interest shall be given due attention.
4. To ensure that wherever possible consumers have sufficient access to goods & services at competitive prices.
5. To seek damages against unfair trade practices, restrictive trade practices or any other form of manipulation of consumers by traders.

(5 marks)

(Total 10 marks)

Answer No. 05

- (a) One of the basic principles of company law is the separateness of the company from those who own it, (the shareholders), and those who manage it, (the directors) .

The company's assets, liabilities and contracts belong to the company and not to the shareholders who own the company, nor to the directors who are its officers and agents.

Further, the company's existence is unaffected by changes in membership. Members may come and go, but the company continues unaffected, as the company has perpetual succession.

This concept of a company as a person separate from those who compose and direct it, is the fundamental principle of company law, and distinguishes companies from sole traders and partnerships.

The principle that the company is a separate legal entity distinct from the members who compose it, was established by courts in the case of Saloman Vs Saloman, [**Salomon vs Salomon Co. Ltd. (1897) A.C. 22**].

(4 marks)

- (b) In the following situations the **courts can lift the veil of incorporation**.

1. When the company has been used as a cover for deliberate wrong doing.
2. When the number of members falls below the statutory minimum.
3. If the controlling shareholder uses the company as his agent, or if the corporate body is abused for an unlawful or improper purpose.
4. To prevent a fraud.
5. To determine a company's place of residence for the application of specific statutes such as tax laws.
6. To prevent deliberate evasion of contractual obligations.
7. To promote the interests of national security, or to ensure conformity with public policy.
8. Legislation sometimes lifts the veil – Eg:- in requiring Holding and Subsidiary Companies to prepare group accounts.

(6 marks)

(Total 10 marks)

Answer No. 06

- (a) Once the resolution is adopted, the company must **notify the Registrar** of the change within **ten working days**.

Thereafter the Registrar will issue the company with a **new Certificate of Incorporation**, incorporating this name change. This certificate has to be collected by the company.

Thereafter the company must give **public notice** of the change of name within **twenty working days** of the change.

The public notice must be in **all 3 languages**.

(4 marks)

- (b) (i) To change the Articles of the Company. – Shareholders Special Resolution. (section 15)
- (ii) To approve the declaration of Dividends of a Company. – Shareholders Ordinary Resolution. (Sections 56, 60 & 61)
- (iii) To borrow 100 million from Prime Bank. - Directors Resolution
- (iv) To reduce the Stated Capital of the company. - Shareholders Special Resolution (sections 59 & 92)
- (v) To purchase a property in the name of the company - Directors Resolution
- (vi) To approve the year end audited financial accounts of the company. – Shareholders Ordinary Resolution

(6 marks)

(Total 10 marks)

Answer No. 07

- (a) In the given question both Arun and Lal have been involved in two pre-incorporation contracts with “A & L (Pvt) Ltd.”

Notwithstanding anything to the contrary in any law, a pre-incorporation contract may be ratified within such period as may be specified in the contract or if no such period is specified, within a reasonable time after the incorporation of such company, in the name of which or on behalf of which it has been entered into. [Sec. 23 (2)].

A pre-incorporation contract that is ratified as stated above, [Sec. 23(2)], shall be as valid and enforceable as if the company had been a party to the contract at the time it was entered into. [Sec. 23 (3)]

A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under the Act. (Section 19). [Sec. 23 (4)]

Therefore after incorporation, if “A & L (Pvt) Ltd.” can ratify these two contracts within a responsible time, if time is not stipulated in the contract, or within the specified time frame if time frame is stipulated in the contract, then such contracts will be valid and binding on the parties.

In such an event both Arun and Lal, will be able to claim the pre-incorporation expenses they incurred from the company “A & L (Pvt) Limited.”

(6 marks)

- (b) (i) A Company incorporated outside Sri Lanka; which either after the appointed date establishes a place of business in Sri Lanka OR if it has already established a place of business in Sri Lanka before the appointed date continues to have the established place of business in Sri Lanka after the appointed date.

- (ii) A Registered Overseas Company has the same power to hold land as if it was a company incorporated under the Act.

(6 marks)

(Total 10 marks)

Answer No. 08

A promoter stands in a fiduciary duty with the company he is forming.

A promoter cannot make secret profit out of the transactions that he enters into with the company he is promoting.

Thus it is implied that a promoter can make a profit out of its transactions with the company provided that he discloses the profit he proposes to make, to the company, before the company enters into such transaction.

Such disclosure can be made either to-

- (i) an independent Board of Directors ; or
- (ii) prospective shareholders.

If the promoter does make such secret profits, then the company may exercise any of the following options :

- Claim for damages for the breach of this fiduciary duty.
- Recover the secret profit made by the promoter.
- Cancel or rescind the contract, and recover the purchase monies paid to the promoter.

The above rules on disclosure apply to Meeran Company (Pvt) Ltd., as a promoter, in the given transaction.

(Total 10 marks)

Answer No. 09

- (a) Under the provisions of section 210 of the Company's Act, no person shall be capable of being appointed as a director of a public company or of a private company which is a subsidiary of a public company, if he has attained the age of seventy years.

According to section 211, the appointment of a director who has attained the age of seventy years, can be valid if his appointment is made or approved by a resolution passed by the company at a general meeting which declares that the age limit referred to in section 210 shall not apply to that director.

However, any such resolution approved at a general meeting will be valid only for one year from his appointment.

Therefore if this procedure is followed, then Supun can be appointed as a director of "Exceptional PLC".

(Section nos. are not expected)

(5 marks)

- (b) If it appears to a director that the company's net assets are less than half of its stated capital, the board must call an **extraordinary general meeting within twenty working days** of the director becoming aware of the fact.

The **meeting must be held** not later than **forty days** from the date of calling such meeting.

The notice of the meeting must be accompanied by a **report** from the board advising shareholders of the nature and extent of losses incurred, cause or causes for such losses, and the steps that the board has taken to prevent further losses or to recoup losses already incurred.

[Section 220]

(5 marks)

(Total 10 marks)

Answer No. 10

(a) Contents of an Amalgamation proposal - Section 240.

Every company which proposes to amalgamate shall approve in accordance with the provisions of section 241 an amalgamation proposal setting out the terms of the amalgamation, and in particular;

- a) The name of the amalgamated company, if it is the same as the name of one of the amalgamating companies;
- b) The registered office of the amalgamated company;
- c) The full name and residential address of each of the directors of the amalgamated company;
- d) The full name and address of the secretary of the amalgamated company;
- e) The share structure of the amalgamated company, specifying the number of shares of the company ; the rights, privileges, limitations, and conditions attached to each share of the company, if different from those set out in subsection(2) of section 49;
- f) The manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company
- g) If shares of an amalgamating company are not to be converted into shares of the amalgamated company, any consideration that the holders of those shares are to receive in place of shares of the amalgamated company;
- h) Any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (g).
- i) Details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of amalgamated company.
- j) The date on which the amalgamation is intended to become effective.

(5 marks)

- (b) (1) the approved amalgamation proposal;
- (2) any certificates required under sub section(2) of section 241 [certificate of directors opinion] or subsection (5) of section 242 [approval by shareholders /interest group];
- (3) a certificate signed by the board of each amalgamating company stating that the amalgamation has been approved in accordance with the provisions of the Companies Act and the articles of the company;
- (4) a consent from each of the persons named in the amalgamation proposal as a director of the amalgamated company, to act as a director of that company, as required by section 203 [directors consent];
- (5) a consent from each of the persons named in the amalgamation proposal as secretary of that company, as required by subsection (2) of section 221 [appointment of secretary].

(5 marks)

(Total 10 marks)

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