

CA



THE INSTITUTE OF  
**CHARTERED** ACCOUNTANTS  
OF SRI LANKA

# **SUGGESTED SOLUTIONS**

## **16304 – Commercial Law and Corporate Law**

CA Professional (Strategic Level I) Examination  
December 2013

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SRI LANKA**

## Answer No. 01

(a)

- The offeror can withdraw his offer at any time before the offeree accepts the offer.
- However the revocation should be informed to the offeree, before he accepts the offer.
- In the given scenario, though “Amarapala” has withdrawn his offer, it was not communicated to “Berty” before his acceptance as the postal rule will not apply to the revocation of the offer.
- “Berty” without knowing of the withdrawal of the offer, has accepted it.
- Therefore “Berty’s” acceptance is valid.
- There is a clear contract between the parties.
- Accordingly “Berty” can take action against “Amarapala” for breach of contract and claim damages.
- This situation is similar to *Byrne Vs Van Tienhoven* -  
In this case defendant wrote from Cardiff to the plaintiff in New York on October 1<sup>st</sup> 1879, offering to sell certain goods and requesting a reply by cable. The letter was received on 11<sup>th</sup> October, on which day the plaintiff accepted by cable as requested and confirmed this by a letter, posted on October 15<sup>th</sup>.

Meanwhile the defendant had on October 8<sup>th</sup> posted a letter withdrawing his offer. This reached the plaintiff on the 20<sup>th</sup>.

The defendant pleaded that the offer had been withdrawn before the acceptance was either received or dispatched, but it was held that an uncommunicated revocation was, in the eye of the law no revocation at all. Consequently the revocation was not effectual till communicated to the offeree.

**Note :** (Any other relevant case law is also accepted)

(b)

- Only an absolute and unqualified assent, to all the terms of the offer, constitutes an effective acceptance of such offer.
- Therefore if the offer requires the offeree to promise to do or pay something, the acceptance must conform exactly, to the offer.
- If the “acceptance” differs from the terms of the offer, such ‘acceptance’ is treated as a counter-offer, and not as an acceptance of the original offer.
- A “counter-offer” terminates the initial offer.
- Therefore in the given scenario, there is no legal contract between Maria and Nimali, as there was no valid acceptance of the offer by Nimali.
- The facts of the scenario are similar to the decided case of **Neale vs Merrett**.

Note : No case laws are considered as the question, does not request any.

**Answer No. 02**

- (a) Under the Sale of Goods Ordinance, where the sale is agreed to be by sample-
- the bulk must correspond with the sample;
  - the buyer must have a reasonable opportunity of comparing the bulk with the sample;
  - the goods must be free from defect rendering them un-merchantable, which a reasonable examination of the sample would not reveal.

Further under the Sale of Goods Ordinance, where the goods are sold by showing a sample, as well as by description, the goods must correspond both with the sample and the description.

In this scenario, the tea sold to **Harith**, though it matched the quality of the sample did not match the description of "Low grown refined tea". Therefore **Harith** is not bound to accept the tea, and could refuse it, since no contract has been formed in this instance, under the Sale of Goods Ordinance

Reference Note :

The facts are similar to the decided case of **Nichol vs Godts.**

- (b) The following conditions should be satisfied, before any agency can be created by necessity.
- It must be impossible to get the principal's instructions;
  - There must be an actual and definite commercial necessity for the creation of the agency;
  - There has to be a real emergency;
  - The agent of necessity, must act bona fide, in the interests of all parties concerned.

**Answer No. 03**

(a)

(i) **“Marine Insurance Contract”**

'Marine Insurance is a contract whereby the insurer or underwriter undertakes to indemnify the assured in the manner and to the extent thereby agreed, against marine losses, that is to say, losses incidental to marine adventure.'

(ii) Under Marine Insurance, the following persons are deemed to have an insurable interest as follows:-

- The owner of the ship, has an insurable interest in the ship.
- The owner of the cargo, has insurable interest in the cargo.
- A creditor who has advanced money on the security of the ship or cargo, has insurable interest to the extent of his loan.
- The master and crew of the ship, have insurable interest in respect of their wages.
- If the subject matter of insurance is mortgaged, the mortgagor, has insurable interest in the full value thereof, and the mortgagee, has insurable interest in respect of any sum due to him.
- A trustee holding any property in trust, has insurable interest in such property.
- A re-insurer, to the extent of his risk.
- A lender of money on “Bottomry” or “Respondentia”, to the extent of the loan. [“Bottomry” is a pledge of the ship and cargo, to secure a loan, to enable the ship to continue the voyage; whilst “Respondentia” is a pledge on only the cargo and not on the ship. ]

(b) **Types of crossing which will be included in the presentation**

**Cheque crossed generally**

Where a cheque bears across its face an addition of the words, 'and company' or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words 'not negotiable', that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally and can be credited to any account but through a (account) banking channel so that the beneficiary may be traced.

**Cheque crossed specially**

Where a cheque bears across its face an addition of the name of a banker, either with or without the words 'not negotiable', that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker. This is called special-crossed cheque.

**Account-payee or restrictive crossing**

This crossing can be made in both general and special crossing by adding the words “**account payee**”. In this type of crossing the collecting banker is supposed to collect and credit the amount of the cheque to the account of the payee only.

**Not-negotiable crossing**

The words 'not negotiable' can be added to general as well as special-crossing and a crossing with these words is known as *not negotiable* crossing. The effect of such a crossing is that it removes the most important characteristic of a negotiable instrument i.e. the transferee of such a crossed cheque cannot get a better title than that of the transferor (cannot become a holder in due course) and cannot convey a better title to his own transferee, though the instrument remains transferable.



**Answer No. 04**

- (a) The following mandatory information should be submitted by an applicant, in making an application to register a Mark under the Act.
- (i) A request for the registration of the Mark.
  - (ii) The name and address in Sri Lanka of the applicant, and if he is resident outside Sri Lanka, his service address in Sri Lanka.
  - (iii) Five copies of the Mark.
  - (iv) The class, and list of goods or services, in respect of which the registration of the Mark is sought.
  - (v) If the application is through an agent, a power of attorney authorizing the agent, should be attached to the application.
- (b) Every partner has an implied authority to bind the partnership firm, in the following instances; subject to any instructions/notice given to the public to the contrary.
- (i) Selling the goods of the firm.
  - (ii) Purchasing on behalf of the firm, goods of the kind usually employed in the firm's business.
  - (iii) Receiving payment of the firm's debts and giving receipts for them.
  - (iv) Engaging servants for the partnership business.
  - (v) If the partnership firm is a trading firm, in addition to the above, the following instances too fall within the above category :
    - (a) Accepting, making and issuing negotiable instruments in the firm's name.
    - (b) Borrowing money on the firm's credit and pledging the firm's goods to effect that purpose.
    - (c) Instructing an attorney-at-law in an action against the firm for a trade debt.
- (c) Instances where the Computer Crimes Act, No.24 of 2007, can be applied are as follows :
- A person commits an offence under this Act while being present in Sri Lanka or outside Sri Lanka ;
  - The computer, computer system or information affected or which was to be affected, by the act which constitutes an offence under this Act, was at the material time in Sri Lanka or outside Sri Lanka ;
  - The facility or service, including any computer storage, or data or information processing service, used in the commission of an offence under this Act was at the material time situated in Sri Lanka or outside Sri Lanka;

- The loss or damage is caused within or outside Sri Lanka by the commission of an offence under this Act, to the State or to a person resident in Sri Lanka or outside Sri Lanka.

- (d) 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 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. (De novo means to start a fresh)

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

### **Answer No. 05**

- (i) The Companies Act No. 7 of 2007, states that a company shall have not less than 2 shareholders.

But the Act also states that a company may have a single shareholder in the following instances :

- (a) Where such single shareholder is the Secretary to the Treasury, who is holding shares on behalf of the Government of Sri Lanka
- (b) Where the single shareholder is an individual;
- (c) Where the single shareholder is a body corporate

Therefore in conclusion, it could be said that by considering all of the above points, the Act allows the minimum number of shareholders, in the case of a Private Limited Liability Company, to be placed at ONE.

- (ii) The following documents should be submitted to the Registrar of Companies, in order to incorporate a private limited company under the Act :
- (a) Name approval form
  - (b) The application form in the prescribed form (i.e: Form 1), signed by each shareholder and, declaration stating that the name is not similar to that of an existing company, and signed by the initial shareholders.
  - (c) The Articles of Association, if different to the model articles contained in the First Schedule to the Act, and signed by each shareholder.
  - (d) The consent of each director to act as a director of the company, in the prescribed form (i.e: Form 18).
  - (e) The consent of the initial Secretary to act as the Secretary of the company, in the prescribed form (i.e: Form 19).

**Answer No. 06**

- (a) The expression 'pre-incorporation contract' means a contract entered into by a person on behalf of a company before and in contemplation of its incorporation.

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 (section 10).

A pre-incorporation contract that is ratified as mentioned above, shall be valid and enforceable as if the company had been a party to the contract at the time it was entered into.

Therefore in this instance, as Asuru and Sanin have made a pre-incorporation contract by spending on behalf of the company, Rs. 3 million for the hiring of a van and purchase of the items listed in the question, they can claim this money from the company

provided that as promoters they have acted in good faith and have not made any secret profit out of this transaction.

Therefore, if the company does not honour the pre-incorporation contract, the promoters being the aggrieved party can seek relief from courts for breach of a pre-incorporation contract by the company.

- (b) Where a prospectus already issued, includes any untrue statement, any person who authorized the issue of such prospectus, shall be guilty of an offence unless he proves either that the statement was immaterial or that he had reasonable ground to believe that the statement was true and that up to the time of the issue of the prospectus he did believe, that the statement was true (section 42).

### Answer No. 07

- (a) - **Ram**, as a director, must always act in good faith in what he believes to be in the best interests of the company.
- He must not act or agree to the company acting in a manner that contravenes the Act or the articles;
  - As a director he must not act recklessly or be gross negligent, in exercising power;
  - A director must exercise the degree of skill and care, reasonably expected of one with his knowledge and experience.
  - Ram as a director, is not expected to be an expert, unless appointed as such by the company; and in the given scenario he has not been so appointed by the company.
  - The standard required from a director is, the exercise of care and diligence of a reasonable person.
- (b)
- (i) Age limit and its exemption
- Subject to the provisions of the Companies Act, the age of retirement applicable to Harry is seventy years.
  - This age limit will not apply to a director, if his appointment is or was made or approved by a resolution passed by the company at a general meeting which declares that the age limit of 70 years, shall not apply to that director.
  - However, any resolution approved at a general meeting will be valid only for one year from his appointment
- (ii) What he should do on reaching the age limit
- When a director reaches seventy, or is proposed for re-appointment when he has reached seventy or a lower age as may be prescribed by the articles, he must give notice of his age to the company.

(iii) Vacation of office, based on the age limit rule.

- A director shall vacate office :-
  - (a) at the conclusion of the annual general meeting commencing, next after he attains the age of seventy years;
  - (b) if he is reappointed as a director after attaining the age of seventy years, at the annual general meeting following that re-appointment.

**Answer No. 08**

- (a) - The Registrar may call or direct the calling of an annual general meeting of the company and give such ancillary or consequential directions as the Registrar thinks expedient;
  - Including any direction modifying or supplementing in relation to the calling, holding, and conducting of the meeting, the operation of the company's articles and directions to the effect that;
  - The Registrar may also give a direction, that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.
  - Subject to any direction of the Registrar, a meeting so called shall be deemed to be an annual general meeting of the company.
- (b) - Any shareholder or shareholders who has/have a complaint against the company, that its affairs are being conducted in a manner oppressive to any shareholder or shareholders (including the shareholder/s with such complaint), may make an application to court, for an order under the provisions of Section 224. (i.e. Oppression).
  - If the court finds that the allegations are true, it may make an order to remedy the complaint.
  - Pending the making of the final order, the court may on the application of a party to the proceedings, make an interim order which it thinks is necessary for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

**Answer No. 09**

- (a) Any company or body corporate, which is incorporated under the laws of any foreign country.
- (b) An off-shore company shall have power to carry on business outside Sri Lanka; but shall be prohibited from carrying on any business within Sri Lanka.
- (c) An off-shore company may cease carrying on business as an off-shore company, by giving notice to the Registrar in the prescribed form of its intention to do so.
- (d) The documents required to be submitted to the Registrar, by an “off-shore company”, in order to be registered in Sri Lanka as an “off-shore company”, are as follows :
  - i. A certified copy of the charter, statute, memorandum and articles of association or any other document defining the constitution of the company.
  - ii. List of directors of the company, setting out their full names, addresses, occupations and other offices they hold in the company.
  - iii. Name and address of an authorized person of the company who is a resident and citizen of Sri Lanka.
  - iv. The address of the registered office of the company, in the country of incorporation and of the office in Sri Lanka
  - v. A certified copy of the company’s Certificate of Incorporation.

**Answer No. 10**

- (a) Once the written notice is given to the company, requiring the company to purchase those shares ( buy back), the Board of Directors of the company must within twenty working days of receiving this notice under Section 94(1), [*Section no. is not expected from the candidates*],
- (a) agree to the purchase of the shares by the company;
  - (b) arrange for some other person to agree to purchase the shares ;
  - (c) apply to the court for an order under section 97 (*i.e. -Court may grant an order, exempting the company from the obligation to purchase these shares*) or under section 98 (*i.e. if the company is insolvent*)
  - (d) arrange before taking the action concerned, for the resolution to be rescinded (in accordance with section 92) or decide in the appropriate manner not to take the action concerned, as the case may be, and give written notice to the shareholder of the board's decision under this subsection.
- (b) The object clause spells out the objects for which the company was incorporated, and also spells out the business activities that can be performed by the company.

Where the Articles of a company sets out the objects of the company, there shall be deemed to be a restriction placed by the articles in carrying on any business or activity that is not within those objects, unless the articles expressly provide otherwise.

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