

M.K.G CA EDUCATION

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TEST-3

CA FOUNDATION

(12-09-2021 11:30 a.m. to 2:30 p.m.)

Covering topic :

PERFORMANCE OF CONTRACT, BREACH OF CONTRACT AND DISCHARGE OF CONTRACT

Time allowed: 3 hours

Maximum Marks: 100

Question :1

State with reason(s) whether the following agreement are True or false :

1. Anticipatory breach of a contract takes place at the time when the performance is due.
2. Penalty is a fair and genuine pre-estimate of the damages likely to result due to breach.
3. Exemplary damages are available only in case of a breach of promise to marry.
4. A contract which could not be performed because of a default by a third person on whose work the promisor relied becomes void.
5. The insolvency of the promisor discharges the contract.
6. Cancellation of contract is called remission.
7. Unless otherwise agreed, each of a joint promisor cannot compel other joint promisors to contribute equally to the performance of the promise.
8. Where time for performance is specified and the promise is to be performed on demand by the promisee, the promisor must apply for the performance.
9. In the absence of any direction by debtor, a creditor cannot apply the payment towards a time barred debts
10. Where a promisee accepts the performance from a third person, even then he can compel the promisor to perform the promise again.

(2 Marks each)

2*10= 20 marks

Question :2

Multiple choice question

1. Choose the correct statement
 - (a) Liability of a legal representative is limited only to the extent of the estate of the deceased
 - (b) Liability of legal representative is personal and absolute
 - (c) In case of contracts involving personal skill and labour, promisor's death does not put to an end to the contract
 - (d) Notice of assignment of contract is not mandatory

2. Reciprocal promises may be
 - (a) Mutual and concurrent
 - (b) Mutual and independent
 - (c) Mutual and dependent
 - (d) All the three

3. An injunction order is a mode of
 - (a) Recovering special damages not otherwise recoverable
 - (b) Avoiding the payment of damages
 - (c) Seeking specific performance of a negative form of contractual obligations
 - (d) All the three

4. In which of the following cases a contract need not be performed
 - (a) If the promisee agrees to dispense with or remit wholly or in part the performance of the promise made to him
 - (b) When a person at whose option a contract is voidable rescinds it the other party thereto needs not perform any promise thereon contained in which he is promisor
 - (c) If any promisee neglect or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to non performance caused thereby
 - (d) All the three

5. Damages are generally
 - (a) Punitive in nature
 - (b) Compensatory in nature
 - (c) Both
 - (d) None of the above

5 MARKS

Question :3

All parts carry 5 marks each

(a)

Mr. X was a Disk Jockey at a five star hotel bar. As per the contract, he is supposed to perform every weekend (i.e. twice a week). Mr. X will be paid ₹ 1500 per day. However, after a month, Mr. X willfully absents himself from the performance.

- (i) Does the hotel have the right to end the contract?
- (ii) If the hotel sends out a mail to X that they are interested to continue the contract and X accepts, can the hotel rescind the contract after a month on this ground subsequently?
- (iii) In which of the cases – (termination of contract or continuance of contract) can the hotel claim damages that it has suffered as a result of this breach?

(b)

X, Y and Z jointly borrowed Rs. 90,000 from L. Decide each of the following in the light of The Indian Contract Act, 1872:

- (i) Whether L can compel only Y to pay the entire loan of Rs. 90,000?
- (ii) Whether L can compel only the legal representative of Y to pay the loan of Rs. 90,000, if X, Y and Z died?
- (iii) Whether Y and Z are released from their liability of L and X is releases X from his liability and sues Y and Z for payment?

(c)

Explain what is meant by ‘Supervening Impossibility’ as per The Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility?

Question :4

All parts carry 5 marks each

(a)

On 1st June, X contracted to supply Y 1000 cubic feet of Finland Timber @ ₹500 per cubic feet to be delivered at Mumbai from 1st July to 30th September. On 15th June, X informs that he could not supply those goods. The rates of timber per cubic feet on various dates were-on 15th June ₹1,200, on 1st July ₹1,300, on 30th September ₹1,400. State the legal position in each of the following alternative cases :

Case (a) If Y filed a suit for breach of contract on 15th June.

Case (b) If Y filed a suit for breach of contract on 30th September

Case (c) If on 29th September the import of such goods was banned and Y filed a suit for breach of contract on 30th September

(b)

On 20th September X agreed to sell to Y of 10 tons of a particular chemical to be manufactured in his factory @ ₹8,000 per ton to be delivered on 20th October. Calculate the amount of damages which could be recovered by Y from X in each of the alternative cases :

Case (a): the chemical could not be manufactured because of strike by the workers and X failed to supply the said chemical to Y on 20th October.

Case (b): On 19th October, the entire chemical in the factory was destroyed by fire without the fault of either party and X failed to supply the said chemical to Y on 20th October.

Case (c): on 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to ₹10,000 per ton on 1st October. The price of that chemical further rose to ₹12,000 per ton on 20th October. Y decided to rescind the contract on 1st October

Case (d): On 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to ₹10,000 per ton on 1st October. The price of that chemical further rose to ₹12,000 per ton on 20th October. Y decided not to rescind the contract on 1st October and to wait till 20th October.

Case (e): on 1st October, X informed Y that he was not going to supply the goods since the price of that chemical rose to ₹10,000 per ton on 1st October. The price of that chemical further rose to ₹12,000 per ton on 19th October. Y decided not to rescind the contract on 1st October and to wait till 20th October. On 19th October, the entire chemical in the factory was destroyed by fire without the fault of either party.

(c)

State the rules relating to appropriation of payments made by a debtor to his creditor.

Question :5

All parts carry 5 marks each

(a)

A enters into a contract with B to build a house for C. A builds the house according to specifications. B tenders payment. A refuses to accept the money, claiming that it is insufficient because the job was more difficult than he had anticipated. What effect has the tender on B's obligation ?

(b)

In July, 1989 Radhey Shyam entered into a contract with Raja Ram to build a house for a fixed sum of ₹10,00,000. Owing to unexpected shortage of skilled labour and of certain materials, the contract took 24 months to complete instead of the 12 months expected and cost about ₹1,50,000. Radhey Shyam contended that the contract had been frustrated and that he was entitled for the cost actually incurred. Advise Raja Ram.

(c)

When does the claim on quantum meruit arise?

Question :6

All parts carry 5 marks each

(a)

Under what circumstances is a party entitled to specific performance ?

(b)

Discuss the 'novation' and 'rescission' as a mode of discharge of contract giving suitable examples. What is the main point of difference between to two?

(c)

A promises to sell and deliver on the 5th of January a lorry to B. The parties have stipulated that time should be the essence of the contract. A delivers the lorry only on the 5th of February. Explain what are the rights of B against A in this case. Suppose B desires to accept the belated delivery and also to claim compensation for loss occasioned by the nonperformance promise at the time agreed. Advise B as to whether he can achieve these two objectives.

Question :7

All parts carry 5 marks each

(a)

Write short notes on the following:

- (a) Discharge of contract by remission.
- (b) Discharge of contract by Operation of Law.

(b)

What is the distinction between 'liquidated damages' and 'penalty' and what bearing has this distinction in India upon the question of compensation on the breach of a contract?

(c)

Define the term 'reciprocal promise' .What are the various kinds of reciprocal promises? State the rules for the performance of reciprocal promises along with their order of performance.