

COMMERCIAL LAWS AND PROFESSIONAL ETHICS – SEMESTER – 2**MARKS****Q. 2 (a) Ratio Decidendi:**

Definition (means reasons behind the decision):

- (i) Ratio decidendi may be defined as the statement of law on which the judge based his decision.
- (ii) Ratio decidendi may be defined as any rule of law which expressly or impliedly treated by the judge as a necessary step in reaching his conclusion having regard to the line of reasoning adopted by him or necessary part of his direction to the jury.

Main features:

- (i) Ratio decidendi is that part of a judgement which is capable of forming a binding precedent.
- (ii) Ratio decidendi has nothing to do with the facts of the case.
- (iii) It is a statement of law which is carried down to later decisions.
- (iv) Although decisions of superior courts are binding on inferior courts, does not mean that everything that is contained in the judgement binds the court in subsequent cases.

The only part of a judgment which is binding is discovering what is ratio decidendi i.e., the reasons for the decision.

(b) Civil Law and Criminal Law: (Any two differences)

| Sr. # | Civil Law | Criminal Law |
|-------|--|---|
| 1. | Civil law cases affect only the injured party and not the entire society. | Criminal law cases, as a result of a crime affect the whole society. |
| 2. | Civil proceedings are initiated by the injured party. | Criminal proceedings are started by the State and the victim has no say in the matter. |
| 3. | Civil law regulates disputes over the rights and obligations of persons dealing with each other. | Criminal law punishes the guilty person or offender. |
| 4. | In civil cases compensation awarded is given to the injured party. | In criminal cases the fines recovered from the offender are retained by the State. |
| 5. | In civil cases breach is to be proved by the party claiming compensation. | In criminal cases burden of proof to convict the accused lies on the state. |
| 6. | Civil proceedings assist individuals to recover property or enforce obligations owned to them. | Criminal proceedings are taken to suppress crimes and are largely controlled by the state (Government). |
| 7. | Civil law aims to provide individuals compensation for his loss. | Criminal law does not in any way benefit the victim from a conviction. |
| 8. | Under civil law action plaintiff cannot recover more than he has lost. | Criminal law aims to deter wrongdoers and in principle correct and reform offenders. |

COMMERCIAL LAWS AND PROFESSIONAL ETHICS – SEMESTER – 2**MARKS****Q. 3 (a) (i) Legal Rules of a Valid Consideration: (Any five points)**

The legal rules as to the consideration are as follows:

1. Must move at the desire of promisor.
2. May move from promisee or any other person.
3. May be past, present or future.
4. Must be real and not illusory.
5. Need not be adequate.
6. Must be something which the promisor is not bound to do.
7. Must not be unlawful.

(ii) Exceptions Which Make An Agreement Enforceable And Valid Without Considerations : (Any three points)

The following are the exceptions:

1. Natural Love and Affection: A written agreement between the near relations made out of natural love and affection and registered under the law.
2. Voluntary Compensation: Promise made to compensate, wholly or in part, a person who has voluntarily done something for the promisor i.e. past voluntary service.
3. Time-Barred Debt: Written agreement signed by debtor or his agent to pay wholly or in part his debt barred by the law of limitation.
4. Completed Gift: Any gift given will be valid between the donor and donee even though without consideration.
5. Contract of Agency: Agent promises to perform any action for his principal without charging any commission or fee against his normal practice.
6. Remission by Promisee: When a person agrees to receive less than what is due e.g. creditor agrees to give up a part of his claim.

(b) (i) Procedure of registration:

- 1- Prepare an application in the prescribed form
- 2- Set out the prescribed information
- 3- Pay the prescribed amount of fees
- 4- The application along with the required evidence shall be submitted to the registrar of firms of the area in which the business of the firm is situated or is proposed to be situated.
- 5- The registrar on being satisfied that the requirements of law have been duly complied with, shall enter the name of the firm in the Registrar of Firms maintained by him and file the application in his records.
- 6- The registrar shall then issue a certificate of registration.
- 7- The registration shall be effective from the date the name is entered in the register and not from the date the application was received.

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MARKS**Registration compulsory or optional:**

The Partnership Act does not provide for the compulsory registration of firms. The law has left it to the option of the partners to get the firm registered or not.

The law has however, indirectly made the registration of firm compulsory by creating certain disabilities from which an unregistered firm suffers. These disabilities, dealt with in section 60, are such that, sooner or later, every firm has to get itself registered. Remember registration does not create partnership, it is only a reliable evidence of the existence of partnership. It only affords protection to third parties.

(ii) Acceptance of goods delivered by seller:

General principle of law is that the receipt of goods by the buyer does not amount to acceptance of goods by him in performance of the contract of sale. Acceptance is something more than a mere receipt of goods. Acceptance means an absolute assent of the buyer indicating that he has received the goods in performance of the contract of sale. Where the goods are delivered by the seller to a sub-purchaser at the request of the original buyer there is a constructive delivery to the buyer and acceptance by him as he has done an act inconsistent with the sellers' ownership of the goods.

Acceptance of goods by the buyer takes place:

- 1- When buyer intimates to the seller that he has accepted the goods.
- 2- When buyer retains the goods after lapse of reasonable time without intimating to the seller that he has rejected them.
- 3- When buyer does any act to the goods which is inconsistent with the ownership of the seller e.g.
 - Re-sells the goods
 - Pledges the goods
 - Uses the goods
 - Makes some alternation in the good

Q. 4 (a) (i) Endorsement:

Endorsement is a process whereby the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for he same purpose a stamped paper intended to be completed as a negotiable instrument.

The expression endorsement has been used in Act in a technical sense to mean a signature of the maker or holder of a negotiable instrument affixed on the back or face thereof, in a capacity other than as such maker with the intention of transferring the instrument to a third person.

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Essentials of Valid Endorsement: (Any five points)

1. Endorsement consists of signature of the holder
2. It must be either a (a) the back or (b) on the face of the instrument. Or (c) on a slip of paper annexed thereto.
3. It must be made by the maker or holder of the negotiable instrument and not by a stranger.
4. It must be signed by the maker otherwise than as such maker.
5. It must be made in ink and not in pencil or by rubber stamp.
6. Where the endorser is illiterate endorsement may be made by affixation of thumb impression which must be attested.
7. It must be in 'blank' or in 'full'.
8. It must be made with the intention of transferring the instrument to a third person so as to give him right to recover money due thereon.
9. It must be completed by delivery of the instrument.

(ii) Privileges Granted to a Holder of a Negotiable Instrument in a Due Course (Any four points)

- 1- **Better Title:** A holder in due course gets a better title than that of the transferor. Any defence on the part of the person liable, that the instrument has been lost or obtained by offence or fraud or for an unlawful consideration, cannot be pleaded against a holder in due course.
- 2- **Transfer of Good Title:** A holder in due course transfers a good title to the subsequent holders. Once an instrument passes through the hands of a holder in due course, it becomes free from all defects. When somebody gets instrument from holder in due course, he can recover the amount from all prior parties provided he is not a party to the fraud.
- 3- **Incomplete Stamped Instrument:** In case of incomplete stamped instrument, if the original payee fills more amount than he was authorized, he cannot recover the whole amount. But if the same instrument is transferred to the holder in due course, he can claim the whole amount provided it is covered by the stamp affixed thereon.
- 4- **Prior parties:** A holder in due course holds the negotiable instrument free from any defect of title of prior parties, and free from defences available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.
- 5- **Fictitious bill:** The holder in due course is entitled to payment from the acceptor if he can show that the signature of the drawer and that of the first endorser are in the same handwriting. If the holder knows that the drawer's name is fictitious, he is not a holder in due course. The acceptor of a bill cannot, as against a holder in due course, say that the other parties to the bill were fictitious.
- 6- **Instrument without Consideration:** A contract made without consideration is void. But if a negotiable instrument goes into the hands of holder in due course, he is entitled to recover the amount on it, from any of the prior parties thereof.
- 7- **Conditional Instrument:** When a negotiable instrument is delivered to a person for security or safe custody, and not with the object of transferring ownership, the ownership in the instrument does not pass to the transferee. If such an instrument is negotiated to a holder in due course, the parties liable on the instrument shall remain liable to him.

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- 8- **Validity of instrument:** The maker of a promissory note and the drawer of a bill of exchange or cheque and the acceptor of a bill cannot, in a suit thereon by a holder in due course, deny the validity of the instrument as originally made or drawn.
- 9- **Payee's incapacity to indorse:** The maker of a note and acceptor of a bill payable to order cannot, in a suit by a holder in due course deny the payee's capacity at the date of the note or bill to endorse it. A holder in due course can claim payment in his own name despite the payee's incapacity to endorse.
- 10- **Capacity of prior parties:** No endorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

(b) (i) CASE-I:

The buyer is not bound to accept the consignment because the seller has not complied with the stipulation as to time of delivery and time of delivery of goods being of the essence of all mercantile contracts, an essential term of the contract has been broken.

(ii) CASE-II:

Yes, the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. If the letter of acceptance and the e-mail of revocation of acceptance reach Mr. Zafar at the same time, the formation of contract will depend on the fact that which of the two is opened first by Mr. Zafar. If Mr. Zafar reads the e-mail first, revocation is valid but if he reads the letter first, revocation is not possible.

(iii) CASE-III:

Yes both Afzal and Raza are liable for any loss that accrues to Nadeem. In the instant case, since the wrong is done within the scope of the authority of the wrong-doing partner, the other partner is also liable.

(iv) CASE-IV:

Yes, Shahid and Farhan cannot claim from Zahid, who being a minor does not incur any liability on the cheque. Shahid can claim payment from Arshad, the drawer, only and Farhan can claim against Shahid, the endorser and Arshad, the drawer.

Q. 5 (a) The Employer shall not be So Liable:

- (a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding four days.
- (b) In respect of any injury, not resulting in death, caused by an accident which is directly attributable to:-
- (i) the workman having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
 - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

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(b) Badli Worker:

- (i) 'Badli' is a workman who is appointed in the post of a permanent workman or probationer, who is temporarily absent.
- (ii) No temporary workman, whether monthly-rated, weekly-rated, daily-rated or piece-rated, and no probationer or badli, shall be entitled to any notice if his services are terminated by the employer, nor shall any such workman be required to give any notice or pay any wages in lieu thereof to the employer if he leaves employment of his own accord.
- (iii) The "Badli" will not be required to give any notice or pay wages in lieu thereof to the employer if he leaves employment of his own accord.

(c) Provisions Under the Employees' Old Age Benefits Act, 1976 related to Industry or Establishment having a Certain Number Of Employees:

- (i) It applies to every industry or establishment.
Wherein ten or more persons are employed by the employer, directly or through any person, whether on behalf of himself or any other person, or were so employed on any day during the preceding twelve months,
- (ii) The Law would continue to apply even if the number of persons employed therein at any time is reduced to less than ten.
- (iii) Yes, it can voluntary apply and then the Act would be applicable from the date of submission of an application in this regard.

Q. 6 (a) Provisions related to Bid Validity Period Under the Public Procurement Authority Rules:

- (i) The procuring agency shall ordinarily be under an obligation to process and evaluate the bid within the stipulated bid validity period. However under exceptional circumstances and for reason to be recorded in writing, if an extension is considered necessary, all those who have submitted their bids shall be asked to extend their respective bid validity period. Such extension shall be for not more than the period equal to the period of the original bid validity.
- (ii) Bidder agreeing to the procuring agency's request for extension of bid validity period shall not be permitted to change the substance of their bids.
- (iii) Bidder not agreeing to an extension of the bid validity period shall be allowed to withdraw their bids without forfeiture of their bid bonds or securities.

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MARKS**(b) Threats:**

- (a) **Self interest threats**, which may occur as a result of the financial or other interests of a professional accountants or of an immediate or close family members;
- (b) **Self-review threats**, which may occur when a previous judgment needs to be re-evaluated by the professional accountant responsible for that judgment;
- (c) **Advocacy threats**, which may occur when a professional accountant promotes a position or opinion to the point that subsequent objectivity may be compromised;
- (d) **Familiarity threats**, which may occur when, because of a close relationship, a professional accountant becomes too sympathetic to the interests of others; and
- (e) **Intimidation threats**, which may occur when a professional accountant may be deterred from acting objectively by threats, actual or perceived.

(c) Business, Occupation or Activity Inconsistent and Incompatible with the Provision of Professional Services to Client Under the IFAC Code of Ethics:

A business, occupation or activity is inconsistent and incompatible with the provision of professional services to client when it:

1. Creates or would create conflict of interest with existing clients;
2. Impairs or would impair integrity, objectivity or independence in providing professional services to clients,
3. Impairs or would impair to material extent the ability to provide professional services to clients,
4. Impair or would impair the good reputation of the profession.

THE END