

PG Odd Semester (CBCS) Exam., November—2016

BUSINESS ADMINISTRATION

( 3rd Semester )

Course No. : MBACC-302

( Legal Environment of Business )

Full Marks : 70

Pass Marks : 28

Time : 3 hours

*The figures in the margin indicate full marks  
for the questions*

Answer **all** questions

1. How would you define 'contract' under the Indian Contract Act? State the essential elements of a valid contract. What are the different types of a contract? Explain with examples. 2+4+8=14

**OR**

2. Discuss the laws governing the Carriage of Goods Act in India. To what extent is an air carrier liable for damage and for causing death? 10+4=14

3. (Supreme Court Case, February 2014) Fact of the Case :

Close to five years from now, simple complaints from two small investors, the first, in December, 2009 and the second in January, 2011. The complaints alleged that two companies of the Sahara Group, Sahara India Real Estate Corp., and Sahara Housing Investment Crop., were raising capital illegally by issuing Optionally Fully Convertible Debenture (OFCD). Upon investigation, SEBI found that these were issued after filing Red Herring Prospectus (RHP) i.e., one that does not fully disclose details which are done in a normal prospectus. The securities were issued for above the limit; rules required permission from SEBI, which has above fifty investors but investors in Sahara soared over ₹ 3 crore.

SEBI came into action with a demand for ₹ 20,000 Cr. which had to be distributed to the Shareholders but the firm did not comply. After 11 months, November 2010, SEBI sends an order asking the twin Sahara companies to refund the money to the investors. SEBI sent the order a second time in June 2011. Sahara challenged it in the securities appellate tribunal and the court upheld SEBI's orders and directed the companies to refund a total amount of ₹ 25,781 Cr. to over 3 Cr. investors.

Sahara moved to the Supreme Court (SC) and the SC of India passed a landmark order on 31.08.12 ordering the companies to refund the amount with the concession that they may pay to the investors in 3 instalments with deadlines. Sahara complied, but only with the first installment, the other two deadlines elapsed. As a result in February, 2013 ₹ 24,000 Cr. was in default which led SEBI to attach Group's bank accounts and other properties and also issued Summons to the Chairman of the company and other three directors. On 10 April 2013, they appeared before SEBI and was claiming to have cleared the outstanding liabilities. At the same time, these hit the SEBI for making baseless allegations. Further SEBI sent notices to the financial Institutions and banks to freeze all accounts and also brought into action the department of taxes, Enforcement Directorate (ED). In May, 2013, it initiates the process of refunding the investors as directed by the SC. But SEBI has not been able to disburse money the papers which were dramatically delivered by Sahara are not in order, false accounts, multiplicity of accounts and scores of other irregularities have marred and confounded the sordid situation. It was SEBI's turn to knock on the door of the court.

On 20 November, 2013, SEBI submits before the SC that the company had overvalued its assets (which was submitted to SEBI properties of worth ₹ 20,000 cr) and has failed to submit the title deed. The SC order and bars the Chairman and three other directors from leaving the country and none of its properties shall be sold. Sahara Group frustrated the SC by its non-compliance and non-cooperative attitude. As a result, SC issued a non-bailable warrant for his arrest. The police fail to nab him. On 27 February 2014, he offers unconditional apology and surrenders and is promptly sent to jail.

*Questions :*

- (a) What are the legal issues involved in the case?
- (b) Comment on roles played by SEBI and the Sahara.
- (c) How would you see this case in the perspective of the following?
  - (i) The company
  - (ii) The employee
  - (iii) The investors
  - (iv) Other corporations
- (d) What conclusions do you draw for yourself as a Manager from the facts of the case? 2+2+4+6=14

( 5 )

4. Distinguish between FERA and FEMA. What is the rationale for review of the Companies Act, 1956? Make a comparative analysis of the changed provisions. 4+2+8=14

**OR**

5. Enumerate the basic principles of insurance with respect to life and non-life with examples. What are the duties, powers and functions of IRDA? 10+4=14

6. Define the term 'Essential Commodities'. How are the objectives of the Act implemented at Central and State level? 2+12=14

**OR**

7. Write notes on the following (any two) : 7×2=14

- (a) Power and Jurisdiction of Consumer Redressal Agencies
- (b) Committees on Insolvency
- (c) Benefits and limits of multi-State Cooperative Societies Act, 2002
- (d) Information Technology Act, 2000

( 6 )

8. (Supreme Court Case, May 2005) :

Appellant : Vijay Kumar

Respondent : Yashpal Singh and Others

Facts of the Case :

A complaint was filed by the appellant alleging that in the year 1995, respondent No. 1 had issued a cheque of ₹ 5,15,053, representing balance amount payable to the appellant for supply of goods to a partnership firm of which respondents are partners. It was indicated that the total amount payable was ₹ 49,21,482, against which the accused had paid ₹ 44,06,429 leaving balance of ₹ 5,15,053.

A cheque drawn on Oriental Bank of Commerce, Ludwa Br. (A/C No. 954) was issued for the same amount on 27 January, 1995. The cheque was signed by respondent No. 1, Yashpal Singh, for the firm and respondent No. 2 Nirpal Singh, was a partner in the partnership firm, namely, M/s Sat Guru Rice Traders, New Delhi.

The cheque was dishonoured due to inadequacy of funds in the account. Intimation was given on 6 February 1995. Notice was issued by the appellant demanding payment by lawyer's notice dated 17 February 1995. The amount was not paid. The respondent requested the appellant for sometime to make the payment. On the request of the respondents, the cheque was again presented on 6 July 1995 and it was again dishonoured due to inadequacy of funds.

Intimation in this regard was sent to the appellant on 10 July 1995. Again lawyer notice was sent on 24 July 1995. Reply was sent by the respondent on 16 August 1995, refuting the allegations contained in the legal notice. The complaint was lodged on 28 August 1995. Charges were framed.

Respondents filed an application for discharge which was dismissed by the Trial Court by order dated 29 January 2002. The order was challenged before the High Court (HC) which by the impugned judgement held that the requirement of Sec. 142 of the Act were not met.

*Questions :*

- (a) Illustrate in your own words the application and importance of Sec. 138 and 142 of the Negotiable Instrument Act, 1881 in the case.
- (b) What do you mean by 'insufficient fund'? State the legal issues involved in the case.
- (c) Why dishonouring of cheques needs not only civil procedure but also a criminal indictment?
- (d) What lessons do you learn from the case? 4+4+4+2=14

★ ★ ★