

BUSINESS LAWS – STAGE-1**SECTION – A****Q.2 (a) □ Public Law:**

Public law governs the relationships between the individual and the State (Government). Public law is concerned with the public as a whole.

Examples of public law are: **{Any two (2)}**

- (i) International law;
- (ii) Constitutional law;
- (iii) Administrative law;
- (iv) Criminal law.

□ Private Law:

Private law governs the relationship of individuals between individuals.

Examples of private law are: **{Any two (2)}**

- (i) Company law;
- (ii) Law of tort;
- (iii) Law of contract;
- (iv) Law of agency;
- (v) Law of guarantee;
- (vi) Law of negotiable instruments.

□ Civil Law:

Civil law identifies the circumstances in which individuals may seek remedies from the State (Government) or from one another against wrongful acts which do not necessarily constitute crime. So civil law governs the rights and duties of individuals.

Examples of civil law are: **{Any two (2)}**

- (i) Company law;
- (ii) Constitutional law;
- (iii) Revenue law;
- (iv) Family law;
- (v) Commercial law;
- (vi) Employment law;
- (vii) Action for breach of contracts and torts (i.e., civil wrong).

(b) Passing Money Bills:

A money bill shall originate in the National Assembly and after being passed by it shall be sent to the President direct for assent. A money bill shall not be transmitted to Senate.

BUSINESS LAWS – STAGE-1**SECTION – 'B'****Q.3 (a) (i) Essentials of Fraud:**

1. There must be representation (or assertion), and it must be false.
2. Representation (or assertion) must be of a fact.
3. Representation (or assertion) must have been made with a knowledge of its falsity or without belief in its truth or made recklessly.
4. Representation (or assertion) must have been made with the intention of inducing the other party to act upon it.
5. Representation must in fact deceive.
6. Party subjected to fraud must have suffered some loss.

(ii) Silence with respect to Fraud:

The following two exceptions provided in the Explanation:

1. Silence is fraudulent, if the circumstances of the case are such that it is the duty of the person keeping silence to speak.
2. Silence is fraudulent, if circumstances are such that silence, in itself is equivalent to speak.

(b) (i) Partnership Deed or Articles of Partnership:

The document which contains the partnership agreement is called 'partnership deed' or 'articles of partnership'. Partnership deed contains the agreement between the persons who have consented to form a partnership. It is an elaborate document and is usually drafted and prepared by a lawyer. The deed is stamped according to the provisions of Stamp Act, 1889.

Contents of Partnership Deed: {Any five (5)}

The partnership deed usually provides for these matter:

1. name of firm and names of partners;
2. nature and place of business;
3. date of commencement of partnership;
4. duration of firm;
5. capital, interest or drawings;
6. operation of banking account;
7. profit-sharing ratio;
8. management;
9. accounts;
10. valuation of goodwill;
11. arbitration;
12. continuance or otherwise of firm on death or insolvency of partner;
13. rules regarding admission, retirement, expulsion;
14. salaries of partners;
15. settlement of account on dissolution.

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(ii) No,

a money lender to a business in consideration thereof shares in the profits of such business whether in substitution of interest or in addition to interest cannot be regarded as a partner in such firm. To constitute a partnership there must be community of benefit and not a conflict of interest as in the case of creditor and debtor.

(iii) No,

because Mr. Abdul Jabbar cannot be a partner in a firm as he is incompetent to the contract on the basis of his age.

Q.4 (a) (i) Modes of Delivery of Goods:

Delivery of goods sold may be (a) actual, (b) symbolic or (c) constructive.

(a) Actual delivery (section 33):

Actual (or physical) delivery takes place where the goods are handed over by the seller to the buyer or his agent authorized to take possession of the goods.

Example:

- Mr. 'S' sold a mercantile law book in Rs.200 to Mr. 'F'. Mr. 'S' handed over the book to Mr. 'F'.

(b) Symbolic delivery:

Symbolic delivery is made by indicating a sign or by giving a symbol or by providing the means of obtaining possession. In symbolic delivery the goods themselves are not delivered either because they are ponderous or bulky. Symbolic delivery is as effective as actual delivery event though there is no change in the possession of goods.

Example: {Any one (1)}

- Mr. 'I' handed over the key of car to Mr. 'H'.
- Mr. 'T' handed over the bill of lading to Ms. 'J'.

(c) Constructive delivery [section 36(3)]:

Constructive delivery, (or delivery by attornment) takes place when the person in possession of goods of the seller at the time of sale acknowledges to the buyer that he holds such goods from now on his behalf. This may take various forms e.g.:

- (i) where the seller in possession of goods agrees to hold them from now on behalf of buyer.
- (ii) where the buyer is in possession of the goods and the seller agrees to the buyer's holding the goods as owner.
- (iii) where a third person in possession of goods acknowledges to the buyer that from now on he holds the goods on his behalf.

BUSINESS LAWS – STAGE-1**Examples:**

- 'A' sells to 'B' sugar bags lying in 'C' godown. 'A' orders 'C' to transfer the sugar bags to 'B'. 'C' transfers the sugar bags in his books to 'B'.

(ii) Difference between Sale and Agreement to Sell: {Any two (2)}

Particulars	Sale	Agreement to Sell
1. Transfer of Property	In a sale, the property in the goods passes from the seller to the buyer immediately.	In agreement to sell, the ownership does not pass to the buyer at the time of contract.
2. Change of Ownership	In a sale, the seller remains no more owner of goods sold.	In agreement to sell, the seller continues to be the owner until the agreement to sell becomes an actual sale by the expiry of certain time or fulfillment of certain conditions.
3. Nature of Contract	Sale is executed contract.	Agreement to sell, an executory contract.
4. Existing and Future Goods	Sale can only be of existing and specific (or ascertained) goods.	Agreement to sell is usually of future, contingent or unascertained existing goods.
5. Risk of Loss	In a sale, if the goods are destroyed, loss falls on the buyer, even though the goods are with the seller.	In agreement to sell, if goods are destroyed, loss falls on the seller, even though goods are in the possession of buyer.
6. General and Particular Property	A sale is a contract plus conveyance and creates jus in rem (i.e., gives right to buyer to enjoy goods as against the whole world).	An agreement to sell is a contract, pure and simple, and creates jus in personam (i.e., gives right to either buyer or seller against the other for any default).
7. Right to Re-Sale	In a sale, seller cannot re-sell the goods except under section 30 or 54.	In agreement to sell, the seller still being the owner can dispose of the goods.
8. Insolvency of Buyer	In a sale, if buyer becomes insolvent before payment, in the absence of lien, must deliver goods to official receiver or assignee.	In agreement to sell, if buyer becomes insolvent before payment, the seller may refuse to deliver the goods unless paid for.
9. Insolvency of Seller	In a sale, if seller becomes insolvent, the buyer, as owner, is entitled to recover the goods from the official receiver or assignee.	In agreement to sell, if the seller becomes insolvent, the buyer who has paid the price can only claim rateable dividend and not the goods.

(b) (i) Negotiable Instrument:

Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or bearer, whether the words 'order' or 'bearer' appear on the instrument or not.

BUSINESS LAWS – STAGE-1**Elements of Negotiable Instruments:**

For a negotiable instrument the following essential elements are required:

{Any five (5)}**(a) Written:**

Negotiable instrument must be in writing.

(b) Signed:

Instrument must be signed by the maker (or drawer).

(c) Unconditional:

It must contain unconditional promise or order to pay.

(d) Certain Sum:

Instrument must require payment of a certain sum of money only and nothing else.

(e) Certain Time:

Instrument must be payable at a time which is certain to arrive.

(f) Certain Payee:

Drawee of a bill or cheque must with reasonable certainty be named or described.

(g) Mere Delivery:

Instrument must be transferable by simple delivery like cash.

(ii) Parties of Promissory Note: {Any three (3)}**1. Maker:**

The person who makes or executes a note promising to pay the amount mentioned therein.

2. Payee:

The person to whom the note is payable.

3. Holder:

A person who is either payee or an indorsee.

4. Indorser:

The person who indorses the note to any one else.

5. Indorsee:

The person to whom the note is indorsed.

SECTION 17C**Q.5 (a) (i) Industrial Establishment:**

Industrial establishment means:

(a) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936; or

(b) a factory as defined in clause (j) of Section 2 of the Factories Act, 1934 (XXV) of 1934); or

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- (c) a Railway as defined in clause (4) of Section 3 of the Railways Act, 1890 (IX of 1890); or
- (d) the establishment of a contractor who, directly or indirectly, employs workmen in connection with the execution of a contract to which he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on; or
- (e) the establishment of a person who directly or indirectly employs workmen in connection with any construction industry.

(ii) Probationer:

A probationer is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three month's service therein. If a permanent employee is employed as a probationer in a higher post he may, at any time during the probationary period of three months, be reverted to his old permanent post.

(iii) Temporary Workman:

A temporary workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months.

(b) Provisions Related to Hours of Work, Holidays and Leave With Pay of Employees in Factories Act, 1934:**Hours of Work:**

The provisions of the Factories Act, 1934 with regard to hours of work are as under:

□ Daily Hours:

An adult worker shall not be required or allowed to work in a factory for more than nine (9) hours in any day. But a male worker in a seasonal factory may work ten (10) hours in a day.

□ Weekly Hours:

An adult worker shall not be required or allowed to work in a factory for more than forty-eight (48) hours in any week. But an adult worker may:

- (a) not be allowed to work in a seasonal factory for more than fifty (50) hours in a week; and
- (b) in a factory engaged in work which, for technical reasons, must be continuous throughout the day may work for fifty-six (56) hours in a week.

Holidays and Leave with Pay:

The provisions of Factories Act, 1934 with regard to holidays and leave with pay are:

□ Weekly Holiday:

An adult worker shall not be required or allowed to work on Friday unless:

- (a) he is granted a holiday on one of the three days immediately before or after Friday;
- (b) manager has intimated inspector required information and has displayed a notice in the factory.

BUSINESS LAWS – STAGE-1**□ Compensatory Holiday:**

When a worker has been deprived of any weekly holiday, he shall be allowed compensatory holidays of equal number to the holidays so lost.

□ Annual Holidays:

Every worker on completion of twelve (12) months continuous service shall be allowed holidays of fourteen (14) consecutive days. Where a worker fails to take the whole of the holidays due to him the un-availed period shall be carried forward to next year. The un-availed holidays shall be encashed when he leaves the service or is discharged.

□ Festival Holidays:

Every worker shall be allowed holidays with pay on all days declared to be festival holidays. Where a worker is required to work on festival holidays he shall be allowed one day's compensatory holiday with full pay and a substitute holiday.

Q.6 (a) (i) Adult:

Adult and minor mean respectively a person who is not and a person who is under the age of fifteen (15) years.

(ii) Partial Disablement:

Partial disablement means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Schedule 1 shall be deemed to result in permanent partial disablement.

(b) (i) Domestic Servant:

Domestic servant means any person working whole-time in connection with the work of any household for any consideration, whether in cash or in kind.

(ii) Employer:

Employer means in the case of works executed or undertakings carried on by any contractor or licensee on behalf of the State, the contractor or licensee working for the State, and in every other case the owner of the industry, business undertaking or establishment in which an employee works and includes any agent, manager or representative of the owner.

(iii) Week:

Week means a period of seven (7) days commencing at midnight of Friday night.

THE END