

Series -3

Extra questions

Q19. Mr. Sham orders on Mr. Ram to deliver certain goods at Mumbai. While the goods are lying at Mumbai Railway Station, Station Master informs Mr. Sham that the goods are held at station at Mr. Sham's risk, but Mr. Sham became insolvent. Has Mr. Ram has any right as an unpaid seller?

Ans:

- The goods have reached its destination and are in the possession of station master who is supposed to deliver goods to Mr. Sham
- The station master is bailee of Mr. Sham the buyer and not of Mr. Ram the seller
- An unpaid seller can stop the goods in transit in the event of buyer's insolvency
- The right has been lost by the seller as the goods are no longer in transit

Q20. A stock of bark was sold at an agreed price per tonne. The bark was to be weighed by the agent of the seller as also by the buyer for ascertainment of price. A part of the bark was weighed and carried away by the buyer's agent on 12.11.11. On 13.11.11 the remaining stock was swept away the flood. Who will bear the loss and why? Comment based on legal provision

Ans: Goods must be ascertained for property in goods to be transferred to buyer. (Sec 18 of Sale of Goods Act, 1930). The loss of the remaining stock be borne by the seller as the property in the remaining stock was not passed because the required weighing was not completed.

Q21. Lalit delivered sarees valuing Rs. 50000 to Rohit on 'Sale on Return Basis'. Rohit further delivered these sarees to Sumit and Sumit to Mohit on the same terms and conditions. Subsequently, these sarees were burnt by fire while in the custody of Mohit. Lalit filed a suit against Mohit for the recovery of the price, with reference to provisions of the Sale of Goods Act, 1930, examine whether Lalit's suit for the price shall be maintainable.

Ans: In the given problem, Rohit is deemed to have accepted the sarees by further transaction to Sumit and Sumit is deemed to have accepted the sarees by further transaction to Mohit. The ownership is thus vests on Sumit till Mohit approves or does any act adopting the transaction. In the meantime the sarees are burnt from the custody of Mohit, and it is assumed that Mohit has handled the sarees with due care. Hence the loss should fall on Sumit, because at present he is the owner and the risk being associated with ownership unless otherwise agreed between the parties.

Q22. Arun, Varun and Tarun started a Kirana business in Chennai on 1st January, 2012 for a period of five years. The business is resulted in a loss of Rs. 20000 in the first year, Rs. 25000 in the second year and Rs. 35000 in the third year, Varun and Tarun wish to dissolve the firm while Arun wants to continue the business. Advise Varun and Tarun.

Ans: As per provisions of sec 44(f) of Indian Partnership Act, 1932, Varun and Tarun are advised to make a petition to the Court for the dissolution of the firm on the ground that the firm cannot be carried on except at a loss. Since the firm was constituted for a fixed term of five years it cannot be dissolved without the consent of all the partners and as such Varun and Tarun cannot compel Arun to dissolve the business.

Q23. Mayur and Nupur purchased a taxi to ply it in partnership .They had done business for above a year when Mayur, without the consent of Nupur, disposed of the taxi. Nupur brought an action to recover his share in the sale proceeds .Mayur's only defence was that the firm was not registered .Will Nupur succeed in her suit?

Ans: As per section 69(3) of Indian partnership act, the term set off may be defined as the adjustment of debts by one party due to him from the other party who files a suit against him. It is another disability of the partners and of an unregistered firm that it cannot claim a set-off when a suit is filed against it.

Yes, Nupur will succeed in her suit. As the business had been closed on the sale of the taxi, the suit in the question is for claiming share of the assets of a dissolved firm.

Section 69 (3) specially protects the right of a partner of an unregistered firm to sue for the realization of the property of a dissolved firm.

Q24. X and Y were partner carrying on a banking business .X had committed adultery on several women in the city and his wife had left on this ground. Y applied to the court for dissolution of the firm on this ground. Will he succeed?

Ans: As per section 44(c) of Indian partnership act, 1932 sometimes, a partner is guilty of misconduct. When the court is satisfied that the misconduct adversely affect the partnership business in court may allow the dissolution of the firm. Y will not succeed. In this case, though X is guilty of misconduct but his misconduct does not have any adverse affect on their business as banker [**Snow v. Milform (1868) 18 LT 142**].

In the above case, the court observed that how can it said that a man's money is less safe because one of the partner commits adultery .It was further observed that in those cases where the moral conduct of a partner would affect the firm business, it can be ground for dissolution of the firm. E.g. where a medical man had entered into partnership with another and it was found that his conduct was very immoral towards some of his patients; the firm can be dissolved on the ground of misconduct by the partner.

Q25: A Limited liability partnership is not bound by any act of its member. Justify

Ans: If the member has no authority to act on behalf of LLP, the LLP is not bound by his act. A limited liability partnership is not bound by any act of a member in dealing with person if:

- (a) This member in fact has no authority to act for the limited liability partnership by doing that thing.
- (b) The person knows that the members has no authority or does not know or believe him to be member of limited partnership.

Q26: Explain the extent of liability o limited liability partnership under section 26 of LLP act.

Ans: Extend of liability of limited liability partnership is contained is section 27 which are as under:

1. A limited liability partnership is not bound by anything done by a partner in a dealing with a person if;

(a) The partner in fact has no authority to act for the limited liability partnership in doing a particular act; and

(b) The person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

2. The limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.

3. An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

4. The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Series -4

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