

Ans.1 Criteria to be Judge of High Court:

Following is the list of criteria for a person(s) to be appointed as a judge of High Court:

- Ten years' experience as an advocate of a High Court; or
- Ten years' service as a civil servant including three years' experience as a District Judge; or
- Ten years' experience in a judicial office.

Criteria to be Judge of Supreme Court:

Following is the list of criteria to be appointed as a judge of Supreme Court:

- A person with five years' experience as a judge of a High Court; or
- Fifteen years standing as an advocate of a High Court.

Ans.2 (a) Undue Influence:

(i) A contract is said to be induced by "undue influence" where the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other.

(ii) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another.

- (a) Where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
- (b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental distress or bodily distress.

(b) Fraud:

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent with intent to deceive another party thereto or his agent, or to induce to enter into the contract.

- (i) The suggestion, as a fact of that which is not true, by one who does not believe it to be true;
- (ii) The active concealment of a fact by one having knowledge or belief of the fact;
- (iii) A promise made without any intention of performing it;
- (iv) Any other act fitted to deceive;
- (v) Any such act or omission as the law specially declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is in itself, equivalent to speech.

Ans.3 (a) Wagering Agreements:

All agreements knowingly made to further or assist the entering into, effecting or carrying out, or to secure or guarantee the performance, of any agreement void being in nature of wager, are void.

But in this case, Goga and Sheeda were not going to win or lose in terms of money as a result of wrestling match (i.e. uncertain event). The winning amount had not to be given out of their pockets, but had to be paid from the gate money which was provided by the public. As for the condition of payment for non-appearance, no uncertain event provided the equal chances of winning or losing.

Therefore, Sheeda is entitled to recover the amount from Goga as the agreement between Goga and Sheeda is not a wagering agreement and therefore, it is enforceable at law.

(b) Law of Agency:

The relationship between Arif and Moiz, in the above situation, is that of an agency and presence of consideration is not necessary for creation of an agency. The request by Arif to Moiz to look after Arif's shop in his absence tantamount to an express authority which may be given by words spoken or written.

Arif's liability against Moiz as a principal:

Since Arif asked Moiz to look after his shop during his absence, he is bound to indemnify Moiz against all expenses incurred by Moiz on the repair of deep-freezer. The repair of deep-freezer was a lawful act done by Moiz in exercise of the authority conferred on him.

Further, Arif is also bound to bear the discount of 5% which Moiz offered to the customers on the first day, on the pretext that, an agent has the authority in an emergency to do all such acts as a man of ordinary prudence would, for protecting his principal from losses under similar circumstances.

Rights of Arif:

However, Moiz's action of continuing the discount of 5% on sale of meat, following the repair of deep-freezer, was beyond the authority bestowed upon him by Arif as Arif had simply asked him to look after his shop in his absence.

Further, an agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss is sustained he must make it good to his principal and if any profit accrues he must account for it.

In view of above, Moiz's act of offering 5% discount after the first day cannot be justified as a lawful act necessary for the purpose, or usually done in the course of conducting such business.

Resultantly, Arif is entitled to recover the loss incurred as a result of this 5% discount on the price that had been originally fixed by Arif.

Ans.4 (a) Minor's admission to the partnership:

Partnership is created by a valid contract. Since a minor is not capable of entering into a contract, a contract by or with a minor is void ab-initio. Accordingly, a minor cannot be a partner in the firm.

However, a minor can be admitted to the benefits of partnership with the consent of all the partners for the time being. i.e. before admission of a minor there must be an existence of partnership.

Rights, liabilities/limitations of Raghib (minor):

The rights, liabilities and limitations of Raghib who has been admitted to the benefits of partnership are governed by the following rules:

Rights:

- (i) Right to share property and profits of the firm as agreed by the partners.
- (ii) Right of inspecting and taking copies of accounts of the firms ONLY.
- (iii) Right not to be adjudged insolvent.

Liabilities:

- (i) Personally not liable to third parties for the debts of the firm i.e. limited liability.
- (ii) His share is liable for the acts of the firm.

Limitations:

- (i) No status of partner. The minor is not entitled to take part in the conduct of the business of the firm.
- (ii) No suit against partners for profit and property except after disconnecting his relation with the firm.
- (iii) Not entitled to have access to books other than accounts.

(b) Sharing profits is not a conclusive evidence of a partnership:

These situations are:

- The joint owners of a property who share profits or gross returns arising from the property are not partners.
- Where the profits are received by a creditor in payment of a debt or as interest on loan.
- Where the profits are received as wages by an employee.
- Where the profits are received as an annuity by a widow or child of a deceased partner.
- Where the profits are received as consideration for the sale of property/goodwill or share thereof.
- A transferee of a partner's interest.
- A minor who is admitted to the benefits of an existing partnership.

Ans.5 (a) A person is called **holder** of a negotiable instrument if he satisfies the following two conditions:

- He must be entitled to the possession of the instrument in his own name and
- He must be entitled to receive / recover the amount due on the instrument from the parties liable under the instrument

Thus a holder is a bearer of the bearer instrument and the endorsee or payee of the order instrument.

Explanation:

Where the note, bill or cheque is lost and not found again, or is destroyed, the person in possession of it or the bearer thereof at the time of such loss or destruction shall be deemed to continue to be its holder.

Holder in due course:

Holder in due course means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

Explanation:

The title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon.

Payment in due course:

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

(b) Yes it is a valid bill. If the amount in words and figures is different in a negotiable instrument, the amount stated in words is taken as final.

Ans.6 (a) Prohibition of certain names:

Except with the prior approval in writing of the [Commission] no company shall be registered by a name which contains any words suggesting or calculated to suggest:

- (i) The patronage of any, past or present, Pakistani or foreign Head of State;
- (ii) Any connection with the Federal Government or a Provincial Government or any department or authority of any such Government;
- (iii) Any connection with any corporation set up by or under any Federal or Provincial law; or
- (iv) The patronage of, or any connection with, any foreign Government or any international organization.

(b) Rights and liabilities of Mrs. Raheel as provided in the company's memorandum of association.

Mrs. Raheel will be liable to contribute towards the payment of such debts and liabilities of the company as may be contracted before she ceases to be a member, since the company is being wound up within one year after she ceases to be a

member.

She will also be liable for the payment of the costs, charges and expenses of winding up. However, the total liability should not exceed the amount guaranteed by her as the liability of the members is limited.

She also has a right of contribution from others if she has paid in excess of her undertaking.

Ans.7 (a) Conditions which must be satisfied for the inclusion of a statement from Mr. Suleman in BL's prospectus.

A prospectus inviting persons to subscribe for shares in Baykarar Limited (BL) shall not include a statement purporting to be made by an expert (Mr. Suleman), unless he is a person who is not, and has not been, engaged or interested in the formation or promotion, or in the management, of the company.

Such prospectus including a statement purporting to be made by Mr. Suleman shall not be issued, unless-

- (i) Mr. Suleman has given his written consent to the issue of the prospectus containing his statement and has not withdrawn such consent before the delivery of a copy of the prospectus to the registrar for registration; and
- (ii) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(b) (i) The procedure required to be followed to get the charge registered with the registrar.

The Big Ban Limited shall be required to file with the registrar for registration, in the manner required by the Companies Ordinance, the prescribed particulars of the charge by which the charge is created or is evidenced together with a copy of the instrument, if any, verified in the prescribed manner within twenty-one days after the date of its creation.

(ii) The consequences of non-registration.

The floating charge, created by Big Ban Limited on the book debts and stock-in-trade of the company if not registered, shall be void against the liquidator and any creditor of the company and the money secured thereby shall immediately become payable.

The company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Ans.8 (a) Why ML should not sign the finance facility agreement.

ML should not sign the musharika finance facility agreement before fulfilling certain conditions (referred below). However, any contract made by ML after fulfilling certain conditions but before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date,

and on that date it shall become binding.

Conditions which ML must comply before exercising its borrowing powers.

ML shall not exercise any borrowing powers unless:

- (i) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
- (ii) every director of ML has paid to the company full amount on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash;
- (iii) no money is or may become liable to be repaid to applicants for any shares which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares to be dealt in on any stock exchange;
- (iv) there has been filed with the registrar a duly verified declaration by the chief executive or one of the directors and the secretary in the prescribed form that the aforesaid conditions have been complied with and the registrar has issued a certificate to commence business;

If ML exercises borrowing powers in contravention of the above, every officer and other person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding one thousand rupees for every day during which the contravention continues.

(b) Restrictions on director's remuneration etc.:

The remuneration of a director for performing extra services, including the holding of the office of chairman, shall be determined by the directors or the company in general meeting in accordance with the provisions in the company's articles.

The remuneration to be paid to any director for attending the meetings of the directors or a committee of directors shall not exceed the scale approved by the company or the directors, as the case may be, in accordance with the provisions of the articles.

Ans.9 (a) (i) Proper Books of Account:

The books of account are not deemed to be proper with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or the branch office, as the case may be, and to explain its transactions.

(ii) Proper books of account in case of a branch office:

Where a company has a branch office, whether in or outside Pakistan, the company shall be deemed to have complied with the provisions of Companies Ordinance, 1984 relating to keeping of proper books of account, if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarised returns, made up to date at intervals of not more than three months are sent by the branch

office to the company at its registered office or the other place in Pakistan as the directors may decide.

(b) Restrictions imposed with regard to the declaration of dividend:

No dividend shall be paid by a company otherwise than out of profits of the company.

No dividend shall be declared or paid by a company for any financial year,

- out of the profits of the company made from the sale or disposal of any immovable property or
- assets of a capital nature comprised in the undertaking or any of the undertaking of the company

unless the business of the company consists, whether wholly or partly, of selling and purchasing any such property or assets, except after such profits are set off or adjusted against losses arising from the sale of any such immovable property or assets of a capital nature.

No dividend shall be declared or paid out of unrealized gain on investment property credited to profit and loss account.

Ans.10 (i) Appointment of first auditor(s):

The first auditor or auditors of a company shall be appointed by the directors within sixty days of the date of incorporation of the company.

(ii) The person(s) who may or may not be eligible for appointment as auditor(s).

A Chartered Accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961) is qualified to be appointed as an auditor of Sunshine Limited (a listed company).

None of the following persons shall be appointed as auditor of a company:

- (a) a person who is, or at any time during the preceding three years was, a director, other officer or employee of the company;
- (b) a person who is a partner of, or in the employment of, a director, officer or employee of the company;
- (c) the spouse of a director of the company;
- (d) a person who is indebted to the company; (A person who owes a sum of money not exceeding five hundred thousand rupees to a credit card issuer; or a sum to a utility company in form of unpaid dues for a period not exceeding ninety days is not deemed to be indebted to the company.)
- (e) a body corporate; and
- (f) a person or his spouse or minor children, or in case of a firm, all partners of such firm who holds any shares of an audit client or any of its associated companies
- (g) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of the above provisions, disqualified for appointment as auditor of any other company which is that company's subsidiary or holding company or a subsidiary of that holding company.

(THE END)