

**K.J. Somaiya Institute Of Management Studies & Research**  
**Vidyavihar (E), Mumbai - 400 077**  
**Program: PGDM (RM) – VI 2016-18**  
**Subject: Legal Aspects Business**

*Total Marks 25*

*Time : 1 ½ Hours*

*Date: 2<sup>nd</sup> April 2018*

- Q 1. Oasis Ltd. (hereinunder referred to as the ‘Seller’), manufacturers of garments entered into an agreement with Elite Traders (herein after referred to as ‘Purchaser’), for sale of its products. The agreement includes, among others, the following clauses:
- a) That the Purchaser shall not deal with goods, products, articles, by whatever name called, manufactured by any person other than the Seller
  - b) That the Purchaser shall not sale the goods manufactured by the Seller outside the limits of the city of Hyderabad
  - c) That the Purchaser shall sell the goods manufactured by the Seller at the price as embossed on the label of the garments. However, the purchaser is allowed to sell the garments at price lower than those embossed on the price label.
- Q.2. Sohan has a truck, which was driven by a driver Shyam. But Shyam did not have any valid licence for driving the truck. The truck was insured with an insurance company. On the way, all of sudden the truck started burning. Sohan filed the claim with the insurance company. The insurance repudiated the claim on the ground that driver of the said truck did not have a valid driving licence. The truck owner pleaded that the claim is not related to ‘driving’ of the truck but the insurance company did not change its earlier decision. Sohan filed a complaint with the District Consumer’s Disputes Redressal forum. Will Sohan succeed? Discuss.
- Q.3. Who is an Unpaid seller? Explain the rights of an unpaid seller against the buyer and the goods.
- Q.4. A company was promoted to carry on the business of crop-spraying from the air. X, one of its promoters, held bulk of its shares and was its Managing Director. Subsequently, the company entered into a service agreement with him, as its chief pilot also. While piloting one of the aircrafts of the company in the course of the latter’s business, he was killed in air-crash. His wife has claimed compensation under the Workmen’s Compensation Act. The claim is being resisted by the solicitor of the company who contends that X and the company were one and the same person and a person cannot employ himself, no compensation is payable. Decide.
- Q.5. D, a minor, borrowed a sum from M by executing a mortgage of his property in favour of M. Subsequently, D sued for setting aside the mortgage. Is the mortgage valid? Can M recover the sum advanced to D.

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### **Solution Set**

1. Answer as follows:
  - a) Clause (a) restricts the purchaser to deal in the goods of manufacture other than the seller. It is an 'Exclusive Supply Agreement.' Hence this is in contravention of Act.
  - b) Clause (b) restricts the purchaser to sell the goods within a specified area. It is an 'Exclusive Distribution Agreement.' Hence this is in contravention of the Act.
  - c) Clause (c) stipulates the resale price, but it allows the purchaser to sell the goods at lower prices than the stipulated price. It is a 'Resale Price Maintenance Agreement', this is a valid clause.
  
2. Sohan has a truck driven by a driver Shyam who does not hold a valid licence. The truck got burnt, and Sohan filed a claim with the insurance company, he had insured it with, the company which had rejected the claim saying that since the driver, Shyam, did not hold a valid driving licence, they could not honour the claim. Sohan filed a case with the District Consumer Disputes Redressal Forum.

This case is similar to the case of *Jitendra Kumar Vs. Oriental Insurance Company Ltd. and another*, wherein the Supreme Court has held that where the fire has occurred due to the mechanical failure and not due to any act or omission of the driver, the insurance company cannot repudiate the claim because of lack of valid driving license. Hence, in this case also, Sohan, is fully entitled to the claim and the insurance company cannot repudiate the claim on the grounds that the driver did not have a valid driving licence.
  
3. A seller is deemed to be unpaid seller when:
  - a) The whole of the price has not been paid or tendered and the seller has an immediate right of action for the price.
  - b) A bill of exchange or other negotiable instrument was given as payment, but the same has been dishonoured, unless this payment was an absolute and not a conditional payment.

#### **Rights of an Unpaid Seller against goods:**

- Lien
- Stoppage in transit
- Resale

#### **Rights of an Unpaid Seller against the Buyer**

- Suit for price
- Suit for damages
- Suit for interest.

4. X's wife is entitled to compensation and the plea of the solicitor is untenable.

A company on its incorporation, is bestowed with the characteristic of a separate legal entity which implies that the law treats it and its members as different entities. Even if a member holds majority of its shares and manages its affairs, the company retains its distinct personality.

In the given problem X and the company were two different entities and not one and the

same person as alleged by the solicitor. Further, being different entities, they could enter into contracts with each other. As such the company could validly appoint X as its employee under an agreement of service.

Under the provisions of the Workmen's Compensation Act, if a workman dies due to an injury arising out of and in the course of his employment, he is entitled for compensation. As X was killed in an air-crash while piloting one of the aircrafts of the company, his dependant wife is entitled to the compensation.

5. This problem relates to Sec 10 and 11 of the Indian Contract Act, 1872. This problem is based on the leading case of Mohiribibi Vs Dharmodas Ghosh. The mortgage was not valid and the money advanced to the minor cannot be recovered, because a minor is not competent to contract.

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