

**K.J. SOMAIYA INSTITUTE OF MANAGEMENT STUDIES AND RESEARCH,
VIDYAVIHAR, MUMBAI - 400 077**

Program: PGDM (RM) (Batch 2017 - 19), Trim-VI

Subject : Legal Aspects of Retail Management

Maximum Marks : 25

Duration : 90 Minutes

Date : 08/04/2019

Instructions :

- 1. Substantiate your answers with reasons.**
- 2. Question 1 is compulsory and attempt any four of the remaining questions**
- 3. Each question carries 5 marks**

Q.1. Briefly explain any 2 of the following:

- a) Competition Advocacy
- b) Injunction
- c) One Person Company

Q.2. Ms. Alka, daughter of Ashok, was travelling by train. She fell down from the train while she was passing through the inter-connecting passage between two compartments and died as a result of crush injuries on her head.

Ashok claimed compensation from the Railways for deficiency in service. The Railways contended that the redressal agencies under the Consumer Protection Act, 1986 had no jurisdiction to consider a complaint of this nature. They also contended that all the coaches of the train had been thoroughly checked at the starting point of the train and no defect was reported.

Will Ashok succeed in getting compensation? Give reasons.

Q.3. 'N' gave his wife authority to buy goods from 'D'. 'N' became insane, the wife continued to buy from 'D', who did not know of 'N's' insanity. Is 'N' liable to 'D'?

Q.4. 'B' agrees to buy from 'A', 25 sacks of flour by sample. The flour is delivered to 'B', who pays the price. 'B', on examination discovers it not equal to sample. 'B', afterwards uses two sacks, and sells one. He wants to return remaining 22 sacks. Can he do so?

Q.5. 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 and engaged 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 the air-crash. His wife claimed compensation under the provisions of the Workmen's Compensation Act. Her 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.6. Solve:

- a) A railway company refuses to deliver certain goods to the consignee except upon payment of Rs.2,000 being excess or illegal charge. The consignee paid the said amount in order to obtain the goods. Is there any remedy?
- b) Raman purchases a pastry from Standard Pastry Shop. It contained a piece of stone teeth. What remedy has Raman against the shop keeper? Give reasons.

SOLUTION SET

A.1. Following are the explanations:

- a) **Competition Advocacy** – Competition advocacy is one of the main pillars of modern competition law which aims at creating, expanding and strengthening awareness of competition in the market. Sec 49 of the competition Act, 2002 mandates the CCI to undertake advocacy for promoting competition. It means those activities which are conducted to promote a competitive environment for economic activities. The main beneficiaries of competition policy and law are the consumers, whose welfare is the main object. Advocacy is the Act of influencing or supporting a particular idea or policy.

- b) **Injunction** – This is a remedy/relief provided by the Specific Relief Act, 1963. It is an order of the court to do or to abstain from doing something with a view to preventing the subject matter of the contract. There are 2 types of injunction
 - Temporary Injunction
 - Permanent/Perpetual Injunction

- c) **OPC** – Sec 2 (62) of the Companies Act, 2013 defines an OPC as a company which has only one person as member.
Features as follows
 - i) Private company
 - ii) Single member
 - iii) Nominee
 - iv) No perpetual succession
 - v) Minimum one director
 - vi) No minimum paid-up share capital
 - vii) No minimum paid-up share capital
 - viii) Special privileges.

A.2. A railway passenger travelling in a train on payment of consideration was a consumer as the COPRA, 1986 and the travel fare is valid consideration. The Railways tribunal stated that the railways provided for compensation for railway accidents and not for accidental deaths of this nature. On enquiry it could not be proved that this particular coach was checked at the starting point of the train and no defect was reported. There was no paper work to prove this. Thus the deceased passenger was a consumer and Ashok will be entitled to the compensation of Alka's death.

A.3. Yes, N is liable to D. The agency is terminated on the principal's insanity or death. In this case, N gave his wife authority to buy goods from D on his behalf, i.e. wife was acting as an agent of N in the matter of purchase of goods. As N becomes insane the agency is terminated. But sec 208 of the Indian Contract provides that the termination of the

authority of agent does not take effect unless it is known to the third parties. D did not know of N's insanity and therefore, for him the wife continued to be N's agent. Since a principal is responsible for the act of his agent, N is responsible for the purchases made by his wife.

A.4. No, B cannot do so. A buyer is deemed to have accepted the goods (a) when he signifies his acceptance expressly, or (b) when a reasonable time expires and he keeps silent or (c) when he does an act inconsistent with the ownership of the seller.

In this case, B found that the goods did not match the sample. He should have forthwith returned the goods but instead he used two sacks and sold one. The act was inconsistent with the ownership of those sacks by A. He is therefore deemed to have accepted the goods.

By accepting the sacks which violated the condition of sale by sample, B has precluded himself from taking action on the ground of breach of condition of sale by sample. So now he only has a right to claim damages for breach of condition of sale by sample. Thus he cannot return the goods.

A.5. These are facts of the case Lee Vs. Lee Air Farming wherein it was decided on incorporation company gets a different entity so company is different and Mr. Lee is different so his wife is entitled to compensation as Mr. Lee died in the course of his job, so as a nominee he is entitled to the same.

A.6. a) Consignee can recover the amount which was illegally or excessively because to whom money is paid under coercion or by mistake must return it.

b) Raman can sue for damages against the pastry shop. According to Sec.16 of SOGA, 1930, there is an implied condition as to wholesomeness. This means the goods supplied must not be only as per description but also wholesome enough to be eaten.

So in this case it is breach of implied condition on the part of the seller and he must be held liable.
