



Association of Accounting Technicians of Sri Lanka

Level II Examination – January 2022

Suggested Answers

(203) BUSINESS LAW (BLA)

Association of Accounting Technicians of Sri Lanka

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THE ASSOCIATION OF ACCOUNTING TECHNICIANS OF SRI LANKA

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(203) BUSINESS LAW

SUGGESTED ANSWERS

(Total 25 Marks)

SECTION - A

Suggested Answers to Question One:

1.1 (3)

1.2 (4)

1.3 (1)

1.4 (2)

1.5 (2)

1.6 (1)

1.7 False

1.8 False

1.9 True



(02 marks each, 12 marks)

(01 mark each, 03 marks)

1.10

- 1) Non-discrimination on the grounds of race, religion, caste, sex, political opinion, pregnancy, age, disability
- 2) Not using child labor and slave labor
- 3) Freedom of association
- 4) Right to privacy
- 5) Right to join trade unions
- 6) Right to make payments for the work performed
- 7) Right to have security in the workplace
- 8) Freedom to not be subject to sexual harassment in the workplace
- 9) Right to obtain leave

1.11

- 1) Arbitration
- 2) Mediation
- 3) Chambers Of Commerce

1.12

- 1) Seller must have a right to sell
- 2) Where the goods are sold by description, such goods shall correspond with the description.
- 3) The goods supplied must fit for the purpose.
- 4) The goods must be of merchantable quality.
- 5) Where the goods are sold by sample, the goods shall be corresponded with the sample.

1.13

- 1) Incorporation of companies,
- 2) Registration of business names
- 3) Compiling of information that can be used for public in relation to enforcement of Companies Act
- 4) Enforcement of Companies Act
- 5) Communication of information to the public
- 6) Address and attend to inquiries/ concerns raised by business community

1.14

- 1) The Control Test
- 2) The Equipment Test
- 3) The Integration Test
- 4) The Economic Reality Test
- 5) Mixed Test/ Multiple Test

(02 marks each, 10 marks)

(Total 25 marks)

End of Section A

*Suggested Answers to Question Two:***Chapter 05 - Partnership Law**

(a) According to the Partnership Ordinance, partners should involve in partnership business by maintaining full transparency and provide true accounts and full information regarding their dealings. With respect to the scenario given, Jerry has violated the following basic duties of a partner. The duties violated by Jerry can be described as follows.

➤ **Render true accounts and full information on all things affecting the partnership.**

According to the section 28 of the partnership ordinance, **all partners should maintain the transparency of partnership businesses.** Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. If one partner gains an undue advantage by concealing information to other partners, it is a breach of a partner's fiduciary duty.

In the given scenario, by selling computer software to the partnership business at the current market price concealing the discount received, **Jerry has violated his duty of rendering true accounts and full information to other partners.**

Case : Bently v Craven

➤ **Not to compete with the partnership by carrying on a business of the same nature.**

According to the provisions laid down in the Section 30 of the partnership ordinance, **there is a duty of every partner not to compete with the partnership by carrying on a business of the same nature and competing with that of the firm without the consent of other partners.** Any partner in a partnership during the existence of the partnership or even after leaving the partnership should not engage any business competing with the partnership. Any profit earned by engaging in a competing business will be considered as profits earned by the partnership. If a partner without the consent of the other partners, carries on any business of the same nature and competing with the firm, he must pay over to the firm all profit made by him in that business.

Aforesaid legal duty of partners' is also explained in the decided case; **Pillan Bros v Pillan Bros**

In this case, there was a partnership between three brothers, one acquired a rival business of a similar nature. The court held that the profit of the rival business should be shared between the other two partners.

In the given scenario also **Jerry** has started a similar business. Hence, Jerry violated the legal duty explained above.

- **Disclose full information with regard to all benefits derived by him for all transactions concerning the partnership or from any use by him of the partnership property.**

Each partner owes a duty of loyalty to the partnership, and this duty bars the making of any secret profit at the expense of the firm and bars the use of the firm's property for personal benefit. Per section 30 of the partnership ordinance such profits must account to the firm the profit.

Here Jerry has used the computer software being used at the partnership for his business. Hence, he has violated this duty also.

Case : *Pathirana v Pathirana*,

(07 marks)

(b)

If a partner breaches a duty laid down in Section 28, 29 & 30 of the partnership ordinance, an injured partner may recover damages from the partner who breached the duty.

Therefore **Tom** can be entitled for half of the profit earned by selling a software at a higher price and half of the profit earned by running a competing business using partnership assets. In all aforementioned decided cases courts held that those secret and undisclosed profits must be accounted for the partnership.

Therefore, the profit earned by selling software at a higher price to the partnership business should be shared with Tom.

Also, the profit eared by running a competing business using the assets of the partnership should be considered as profit earned from business. It should be shared with Tom as well. If Jerry fails to fulfil the above, a legal action can be filed against Jerry.

(03 marks)

(Total 10 marks)

Suggested Answers to Question Three:

Chapter 10- Offences related to the business environment

(a)

- 1) To prevent money laundering and terrorist financing and to discover such activities.
- 2) To establish an authority for investigation and prosecution of the offences of money laundering and the financing of terrorism.
- 3) To require certain institutions to undertake due diligence measures to combat money laundering and the finance of terrorism.

(04 marks)

(b)

1) Copy right

The economic and moral rights given to Classical, Artistic and scientific works of creators are known as **copyrights**.

Owner of the copyright will enjoy the economic rights of reproduction of the work, sale or lease of work, distribution, communicating to public, translation of the work while he or she also enjoy the moral rights of protection against any distortion, mutilation, or other modifications of or other derogatory action in relation to his work, which would be prejudicial to his honor or reputation.

2) Trademark

A trade mark is any visible sign that serves to distinguish goods or services of one enterprise from another. It could be a word, slogan, name and group of letters, symbol, design and picture, any combination of above sound or shape of a product or packaging. A mark used in connection with goods is known as a **“Trade Mark”**.

Owner of a mark can obtain exclusive right to the mark by registering the mark under the act No 36 of 2003, Intellectual Property Act. The registration of a mark is initially valid for a period of 10 years from the date of receipt of the application for its registration and it can be renewed.

3) Patents

Innovator in an innovation will receive a patent valid for 20 years from the date of filing of the application for its registration. The monopoly granted to the inventor by the state to exclude others from making, using, and selling the patented invention is known as the patent right.

4) Industrial Designs

Industrial designs are the decorative and aesthetic features of goods. The protection for an industrial design can be taken only if it is new. A design is new if it has not been made available to the public anywhere in the world before the date of application for registration

5) Geographical indications

An indicator, which identifies that a good originated in one particular area is a geographical indication. A geographical indication is made if specialty of the good is created due to the origin in a particular geographic location: a country, area, and zone. The given quality, reputation, or other characteristic of the good should essentially attributable to its geographical origin.

Geographical indications prevent the presentation of goods, which suggest that goods originated in a place other than the true place of origin in a manner which misleads the public.

e.g.: Ceylon tea, Sri Lankan Gems, Udarata Tea, Ceylon Cinnamon

(06 marks)

(Total 10 marks)

Suggested Answers to Question Four:

Chapter 08 - Concept of Law of Insurance, Principles and Legal Background

(a)

An insurance agreement should be confirmed by an Insurable interest. Insurable interest is the legal right of the insurer to insure the subject matter. Where, the insurance contract is not supported by the insurable interest, no valid insurance agreement exists. In order to have an insurable interest that person should have financial benefit by the existence of the subject matter and incur financial loss by the destruction of the subject matter.

In Griffiths v Fleming Court held that, a person has an insurable interest in his own life and one spouse has an insurable interest in the life of the other spouse.

Accordingly, **Sarath** is able to obtain an insurance coverage over the life of his wife **Rosy**.

However, In Evans v. Crooks court held that there is no insurable interest in the life of one sibling of the other just because someone has a brother or sister doesn't mean that he is going to "automatically" be able to get an insurance cover for them. Only Surviving siblings may have insurable interest on one of other siblings.

Here, **Malan** is trying to obtain life insurance cover for his elder sister **Priya**. But there is no insurable interest to insure **Malan's** elder sister's life. This is the reason for rejecting Malan's application for his sister's life insurance.

(06 marks)

(b)

Contracts of Insurance are contracts of utmost good faith (*Uberrimae fidei*). Accordingly, all parties are obliged to reveal others all information that might influence the others' decision to enter into the insurance contract or enter in to the contract at what premium. This doctrine provides general assurance that the parties involved in an insurance transaction are truthful. The failure to disclose a material fact causes the insurance contract voidable

Misrepresentation on material fact leads the contract to breach of good faith. Whether the misrepresentation in question is innocent or fraudulent, it can result in a denial of benefits by the insurer.

As per the given facts, **Malan** included in his insurance application as if he parks the car inside the garage whereas the generally parks his car under a tree near the paddy field. Even though it is an innocent mistake, the misrepresentation of facts amounts to a breach of the principle of *uberrimae fidei* by **Malan**. Therefore liability could be repudiated by insurers on ground of misstatement and it can be justified according to the insurance law.

Accordingly, the insurance company can reject **Malan's** claim on the damaged car.

Case Law – *O'Conner V BDB Kirby & Company*

(04 marks)

(Total 10 marks)

Suggested Answers to Question Five:

Chapter 06 - Negotiable Instruments

(a)

	Bill of Exchange	Cheque
1)	It is written to pay on demand at a specified time or at a determined future time.	It is written to pay only on demand.
2)	The drawee does not always have to be a banker.	The drawee of a cheque is always a bank.
3)	Bills of Exchange cannot be crossed.	Cheques can be crossed.

4)	Bills of Exchange are accepted.	Acceptance is not relevant with regard to cheques.
5)	The drawee who pays to a person not bearing the owner of a Bill of exchange, is not discharged from the responsibility by making such payment.	The provisions for protection of the drawee can be seen in the Bills of Exchange Ordinance with regard to a payment made to a person not being the owner of a cheque.

(03 marks)

(b) According to section 29(1) of the Bills of Exchange Ordinance if a bill has following characteristics, a holder of such bill is a holder in due course;

- 1) The bill is complete and regular on the face of it
- 2) The bill is not overdue
- 3) Has taken the bill without notice that it had been previously dishonored
- 4) Has taken it for valuable consideration
- 5) Has taken it in good faith
- 6) Has taken it without knowing that there is a defect in the title of the person who negotiated it.

(04 marks)

(c) The drawer's liabilities are as follows :

- 1) The drawer is liable for acceptance when the bill had been submitted in due manner for acceptance.
- 2) The drawer is liable that the drawee will make the payment when the bill had been submitted in due manner for payment.
- 3) The drawer is liable to compensate the holder or any endorser who is compelled to pay the damages if it is dishonored.
- 4) The drawer cannot deny the existence of the payee or his capacity to enter into contracts.

(03 marks)

(Total 10 marks)

Suggested Answers to Question Six:

Chapter 04 - Law of Agency

(a) As per the given scenario, the nature of the Agency relationship between **Sasreeka** and **Mr. Cool** is "Agency by necessity". Under this category, agent enters into a contract on behalf of principal in emergency situation where the instructions of the principal cannot be sought, an

agency is created as of necessity and in such instance the principle is bound by the action of the agent and agent should act in good faith on behalf of principal.

Following conditions should be satisfied before an “agency by necessity” is created

- There was so emergency situation that instructions cannot be procured from the Principal
- There was an actual commercial necessity to act so.
- The Agent must have acted in good faith on behalf of the Principal
- The Agent’s action must be reasonable and prudent
- The Principal must not have given prior express instructions to the contrary

In the matter of **Great Northern Railway Company V. Swa field**, The concept of agency by necessity was admitted and followed by series of case laws.

In the given scenario, there was a chemical reaction in the containers due to long spending on deep sea. Therefore captain of the ship, **Mr. Cool**, took steps to store them at Chennai Harbour in India at his own cost. After two weeks Mr.Cool decided to sell the fertilizer because he no longer had money to store them. By analyzing the facts in the given scenario it seems that due to the chemical reactions in the containers, actual commercial emergency arose and **Mr. Cool**, acted reasonably and prudently in good faith on behalf of the **Sasreeka**.

These actions fulfill to create an agency relationship by necessity and therefore, it can be stated that there was an Agency relationship between **Sasreeka** and **Mr. Cool** based on “Agency of necessity”.

Cases : *Springer Vs Great Western Railway*
Prager Vs Blackiel and Heacock Ltd

(07 marks)

(b)

This question based on, the duties and rights between principal and agent. Principal (**Sasreeka**) is bound by the Law to indemnify the agent (**Mr. Cool**) for the expenses (costs of storage at Chennai Harbour) incurred by him (**Mr.Cool**) in the execution of his agency.

(03 marks)

(Total 10 marks)

End of Section B

*Suggested Answers to Question Seven:***Chapter 2 - Contract Law****(A)**

According to Law of contract, a contract could be defined as an agreement between parties with an intention to create a legal relationship. Offer is a basic element of a contract and there is no valid contract where there is no valid offer.

Offer must be distinguished from an 'invitation to treat' because acceptance of the invitation to treat doesn't create any valid contract. An expression of willingness to negotiate is known as invitation to treat. Series of decided cases held and followings are instances of invitation to treat;

- An advertisement (Harris V Nikerson , Partridge v Crittenden)
- Auction sales (Payne v Cave)
- Tenders (Spencer v Harding)
- Goods display in a shop to sell (Fisher V Bell , Crawly v Rex)
- Prospectus

In this scenario, **Menika**, displayed an expensive gem-garland marked as the price \$4000 inside the shop window. This is a Display of Goods to sell which comes under the preview of "the invitation to offer/treat" and it does not qualify to be an offer. **Menika** can accept or reject the offer made by **Piyumi**. Hence there is not a valid contract between **Menika** and **Piyumi**.

*(05 marks)***(b)**

According to the scenario, there is a contract between **Victoria Hotel** and **Saman & Piyumi** for a reservation of a hotel room. In this Contract there is an exemption clause. Exemption clauses are introduced to a contract, by a party wishing to exclude certain liabilities under the contract. Hence these clauses are also known as liability excluding clauses.

Lost Necklace

The Notice which stated that "the hotel management will not be held responsible under any circumstances for articles that are lost or stolen" is an exemption clause. Now the question is Hotel Management is covered by the said cause. To be recognized as a valid exemption clause partners must be well aware of the exemption clause and **it must be communicated between them at the time enter into the contract or between doing so**. As per the scenario, Sarath and Piyumi saw the notice after they entered into the contract. At the time of departure **Piyumi** noted that her necklace which was inside the room was missing.

Case : Olley v Marlborough Court

Lost Spare Wheel

When **Sarath** and **Piyumi** searched car parking, one of the hotel security guards shows the directions for car park but he informed that, “Sir we provide parking spaces but not the security as we are running with very limited number of staff.” Not providing security is an exemption clause and it was introduced before enters to the car parking. Based on this **Sarath** cannot claim damages from **Hotel-Victoria** for missing spare wheel of his car.

Therefore, the hotel management is liable for missing item and **Sarath** and **Piyumi** can take the legal action against hotel.

(07 marks)

(c)

Lost spare wheel

The loss of spare wheel is covered by the exemption clause and it was well communicated before entering in to the contract. Therefore in terms of lost spare wheel, **Hotel-Victoria** is not liable to cover the damages.

Lost Necklace

The description on the room door which stated that, “the hotel management will not be held responsible under any circumstances for articles that are lost or stolen” is not an exemption clause as it was introduced after entering to the contract. **Piyumi** can claim damages from **Hotel-Victoria** for the loss of her necklace. Therefore, Hotel is liable to cover damage on **Piyumi** with regard to lost necklace.

Case Law : Olley Vs Marlborough Court

(03 marks)

Chapter 03 - The Law of the Sales of Goods

(B)

Amal entered into a contract with Raj to purchase 10,000 kg of organic fertilizer and before entering into contract **Amal** checked the sample. Received organic fertilizers were not matched with the sample and there is an issue in quality of organic fertilizers. Under the Sales of Goods Ordinance, the implied conditions of the sale of goods ordinance.

In terms of Section 15 (2) of the Sale of Goods Ordinance, the goods sold by a seller in the normal course of business must be of **merchantable quality**. As per the Sales of Goods Ordinance when the goods are brought by description from a seller who deals in goods of that

description there is an implied condition that the goods shall be a merchantable quality. That is, the goods sold by the seller should be fit for general use for the purpose intended.

- Section 15(2) of the sale of goods ordinance set forth in **G.W.P Gunawardena V Ceylon Steel corporation** by Court of Appeal of Sri Lanka.

In this case, a machine which is used to boil and dry paddy was found to be defective since the paddy inserted to it was subject to change of color and impurity. The Sri Lankan Court of Appeal was of the view that the machine was not of merchantable quality.

- Further in, **Howell V Coupland**

The buyer had asked for fresh crabs from the seller who had provided boiled/smoked crabs, following the consumption of which, the buyer had fallen ill. The Court held the goods sold was not of merchantable quality.

The bulk of fertilizer purchased by **Amal** is not fit for general use as it is not suitable for organic vegetable farming due to its poor quality and the chemical content. As such, **Raj** had breached an implied condition of the Sale of Goods Ordinance.

Further, the implied condition stipulated in Section 16 (1), that where the **goods are sold by sample**, there is an implied condition that the goods shall be corresponded with the sample. Accordingly,

- buyer shall have a reasonable opportunity of comparing the bulk with sample
- the bulk shall be free from any defect other than those were present in the sample
- the bulk shall correspond with the sample in general

If the good is of a defect which would not be apparent on reasonable examination of the sample, the seller can be held liable, even though the bulk is corresponded with the sample.

Accordingly **Raj** had breached two implied conditions of the Sale of Goods Ordinance as explained above.

Therefore, **Amal** can take legal actions against **Raj** to recover the loss.

Cases : *Drummond V Van Ingen*

Millars of Falherrk Ltd. Vs Turpie Wren Vs Holt

(10 marks)

(Total 25 marks)

End of Section C

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