REVALIDATION PAPER NO : RV/06/CIA/2010

SUBJECT : COMMERCIAL AND INDUSTRIAL LAWS

Section 1

Q2

(a) Essentials of Valid Contract:

(i) Agreement – In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements offer and acceptance. Thus there must be atleast two parties – one making offer and another accepting it. The terms of offer must be definte and the acceptance must be obsolute and unconditional.

(ii) The parties must intend to create a legal relationship Agreements of social or domestic nature do not contemplate legal relationship, so they are not contra For example, a husband promising his wife to buy her a necklace on occassion of her birthday is not a contract.

(iii) Lawful Consideration – The agreement must be supported by a lawful consideration. Consideration means 'something in return'. 'Something in return' may be an act or abstinence. But it must be real and lawful.

(iv) The parties to an agreement must be capable of entering into a contract. A person is considered competent if he is (a) eighteen years of age (b) of sound mind (c) not disqualified from contracting by any law which he is subject.

(v) The object of agreement must be lawful.

(vi) The consent of the parties must be free and genuine, ie not induced by coercion, undue influence, fraud or misrepresentation.

(vii) The agreement not expressly declared void or illegal by law.

(viii) The terms of agreement must be certain and capable of performance.

For eg: 'D' agrees to sell 'C' garments. The type, quality, value etc are not discussed. The agreement cannot be enforced as terms ~~of~~ are uncertain.

(x) Legal formalities: where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled. A contract may require registration in addition of being in writing. However as regards to legal effects, an oral contract has same weightage as a contract in writing.

Q2 (b) (i) Minor

(ii) Unsound mind

(iii) disqualified from contracting by any law to which he is subject.

The above are the characteristics of person, who cannot enter into a contract.

Q2 (c) Distinguish between void and illegal contracts.

A void contract is one which has no legal effect. An illegal contract, like the void contract has no legal effect as between the immediate parties, but has this further effect that transactions collateral become tainted with illegality and therefore become enforceable.

Q5(b) Anti Competitive Agreements:

(1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provisions of services, which –

(a) directly or indirectly determines purchase or sale prices
(b) limits or controls production, supply, markets, technical development, investment or provision of services;
(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

Provided that nothing contained in this subsection, "bid rigging" means any agreement, between enterprises or persons referred to in subsection (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in

different markets, in respect of productions, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including :-

(a) tie-in arrangement.

(b) exclusive supply agreement.

(c) exclusive distribution agreement.

(d) refusal ~~a~~ to deal;

(e) resale price maintainence

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation: For the purposes of this subsection —

(a) "Tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase to purchase some other goods.

(b) "Exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of seller or any other person:

(c) "Exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of goods.

(d) "Refusal to deal" includes any agreement to limit, restrict or withhold the output or supply of any goods

(5) Nothing contained in this Section shall restrict:-

(i) the right of any person to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under —

(a) Copyright Act 1957
(b) Patents Act 1970
(c) Trade and Merchandise Marks Act 1958
(d) Geographical Indications of Goods Act 1999
(e) Designs Act 2000
(f) Semi Conductor Integrated Circuits Layout Design Act 2000

(ii) The right of any person to export goods from India to extent to which agreement relates exclusively to production, supply, distribution or control of goods or provision of services for such export.

Q5 (c) Objectives of Right to Information Act:

(i) Give effect to fundamental right to information, which will contribute to strengthening democracy, improving governance, increasing public participation, promoting transparency and accountability and reducing corruption.

(ii) Establish voluntary and mandatory mechanisms or procedures to give effect to right to information in a manner which enables person to obtain access to records of public authorities in a swift, effective, inexpensive and reasonable manner.

(iii) Promote transparency, accountability and effective governance of all public authorities by, including but not limited to, empowering and educating all persons to:

- Understand their rights in terms of this Act in order to exercise their rights in relation to public authorities
- Understand the functions and operation of public authorities, and effectively participating in decision making by public authorities that affects their rights.

Q2) Role of Evidence in Auditing:

Meaning and Importance

The concept of evidence is fundamental to auditing. All auditing techiques and procedures are derived from it. It helps the auditors in perceiving the types of evidence available in an audit situation, collecting it through the various audit techniques and evaluating its sufficiency and competency to support accounting data. Development of this concept is therefore, basic to understanding of audit process. Mautz and sharaf list the following five steps in the process of Judgement formation in auditing.

1. Recognition of the propositions to be proved.
2. Evaluation of proposition in terms of materiality or significance.
3. Collection of evidence with in given limits of time and costs.
4. Evaluation of evidence obtained as valid or not valid.
5. Formation of Judgement as to propositions at issue

Types of Audit Evidence:

(a) Analytical evidence - These evidences consist of Journals, Subsidiary books, allocation sheets, reconcilation statements, or any other records which supports the data appearing in books of accounts.

(b) Corroborative Evidence - This evidence consists of invoices, Confirmations, Cancelled cheques or similar documents.

Obtaining Audit Evidence:

Before obtaining audit evidence the auditor should give consideration to what types of evidence available and how to obtain them. what amount of evidence to be collected depends upon the nature and circumstances of the types of evidence to be collected depends upon the transcation and relevance of the evidence.

Auditors obtain evidence in performing compliance and Substantive procedures by anyone or more of the following methods:

(a) Inspection (b) observation (c) Juquiry and confirmation (d) Computation (e) Analytical Review

Q6)

(a) Efficiency Audit:

The term efficiency audit means studying Competence to achieving goals. The objectives of efficiency audit is to ensure the management Controb are functioning effectively and efficiently in every functional or operational area of business.

The appraisal and review under efficiency audit be divided into following two segments:

(a) Adequacy of qualities and qualification of the personal working to attain business objective.

(b) Effectiveness of the tools and techniques applied in achieving the objectives.

~~The appraisal and review under efficiency audit be divided into following two segments:~~

~~(a) Adequacy of qualities and qualification of the personnel~~

Audit appraisal under efficiency audit includes the following:

(i) Reduce the areas of uncertainty in business.

(ii) Remove the bottlenecks to achieve the goals and objectives of the organisation.

(iii) Safeguard against causes of business failures.

(iv) Remove the inefficiencies and ineffectiveness of operations resulting in cash drainage or other losses.

(v) Stregthen the factors for survival and prosperity of business. The internal audit, under efficiency audit, is to find out whether:

(a) Any delay in decision making has led to additional financial costs.

(b) Any operation of managerial process has led to ineffecti or delayed operation of project.

(c) The area of operation has been managed in an economical and efficient manner in terms of appropriate utilization of man power, plant and machinery, finance, time and material.

(d) Inefficiency has led to non achievement of targeted production and productivity.

The efficiency and effectiveness of an executive in discharging his obligation towards the attainment of organisational objectives and goals will also form part of efficiency audit.

Q6 (b) Qualified Report:

Where an auditor gives an opinion subject to certain reservations, he is said to have given a qualified opinion. A qualified opinion implies that the auditor states that the financial statements reflect a true and fair view subject to certain reservation. Thus, an auditor may give his particular objection or reservation in the audit report and state, "subject to the above, we report that the Balance sheet shows a true and fair view", where an auditor has no alternative but to give a qualified opinion, he must clearly express the nature of the qualification in his report. The reasons of the qualification should also be stated. In the case of Companies, this is a legal requirement under Section 227(4) of Companies Act, which provides that, where the auditors answer any of the statutory affirmations in the negative or with a qualification, their report shall state the reasons of such answers, And to extent possible indicate the financial implication on the statement of Account of the year under report and in the following / subsequent years.

Q6 (c) Auditing in EDI environment: (EDI)

EDI means transfer of structured data between organisations in electronics form. This is widely used in western countries and expected to grow in India too within a very short period. This transfer is done on basis of certain accepted standards having legal base, like EDI FACT standard. Audit in such situations really requires advanced knowledge of computers. To establish the authenticity of the data exchange and also of the parties exchanging data the digital signatures are used, in this case it is extremely difficult to forge digital signature. These signatures are created and verified by the computer programs. The Information Act, 2000 has laid down legal framework for digital signature and electronic records.

Q6 (d) Audit checks incase of Depreciation:

(a) Examine the policy of the Company for charging of depreciation.

(b) Examine whether the method of depreciation and the rates of depreciation are reasonable and sound considering the nature of assets, its operations and estimated life.

(c) Examine whether the rates of depreciation applied and the assets classification are correct according to accounting manual, incase such manual exists.

(d) Examine the depreciation schedule prepared for annual accounts to see whether depreciation for all the existing assets in operation has been included. Also see whether advantage has been taken of the provisions of Income Tax Act and Rules to get maximum depreciation allowable.

(e) Review the Compliance of Schedule VI of Companies Act 1956. Compliance of section 205 payment of dividend out of profit only and section 350 (Ascertainment of depreciation) of Companies Act 1956.