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Test No: _____ Subject:

Marks Scored: Total _____/_____

Que. No.	Marks Obtained	Que. No.	Marks Obtained	Que. No.	Marks Obtained	Que. No.	Marks Obtained

Remarks:

Subject

Strategy:



CA FOUNDATION – NEW SYLLABUS
BUSINESS LAWS

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MARKS: 30

DURATION: 90 MINS

TEST NO. 3
SUGGESTED ANSWER

INSTRUCTIONS :

- Mention your name, subject name & Test No on your first page of the Answer Sheet.
- Paper will only be accepted when uploaded on the Students dashboard.
- Login in to your dashboard, and upload your answers under “**My Answer sheet**” tab
- You can Use **Adobe Scan app or Other**, available in Play Store / App Store for scanning your answer sheet.
- Scan your answer sheet as a single pdf in order to avoid rejection or delay in evaluation.
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OMR SHEET

Q.N.		Q.N.		Q.N.	
1.	(A B C D)	11.	(A B C D)	21.	(A B C D)
2.	(A B C D)	12.	(A B C D)	22.	(A B C D)
3.	(A B C D)	13.	(A B C D)	23.	(A B C D)
4.	(A B C D)	14.	(A B C D)	24.	(A B C D)
5.	(A B C D)	15.	(A B C D)	25.	(A B C D)
6.	(A B C D)	16.	(A B C D)	26.	(A B C D)
7.	(A B C D)	17.	(A B C D)	27.	(A B C D)
8.	(A B C D)	18.	(A B C D)	28.	(A B C D)
9.	(A B C D)	19.	(A B C D)	29.	(A B C D)
10.	(A B C D)	20.	(A B C D)	30.	(A B C D)

MCQ Marks Scored: /

Note: Kindly mention the question number and sub-question properly.

- Questions with incorrect question number/sub question number will not be evaluated.
- Start new questions on new page.

Question 1:**(5 Marks)**

Define Partnership and name the essential elements for the existence of a partnership as per the Indian Partnership Act, 1932. Explain any two such elements in detail.

Answer 1:

Definition __ **Sec. 4:** Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

The essential elements for the existence of a partnership as per the Indian Partnership Act, 1932 are as follows:

- 1) Association of two or more person
- 2) Agreement between person
- 3) Business
- 4) Sharing of profit
- 5) A business carried on by all or any of them acting for all (Mutual Agency)

ASSOCIATION OF TWO OR MORE PERSONS: Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership.

Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners, may be admitted to the benefits of partnership.

The partnership Act is silent about the maximum number of partners but section 464 of the Companies Act, 2013 has now put a limit of 50 partners in any association/partnership firm.

AGREEMENT BETWEEN PERSON: Partnership originates from an Agreement/Contract between persons. Agreement may be express (written or oral) or implied.

BUSINESS: Partnership can be formed only for the purpose of carrying on some business. 'Business' includes trade, occupation and profession. Associations created for charitable, religious and social purposes are not Partnerships.

SHARING OF PROFIT: a) Sharing the profits of business is the essence of Partnership but it cannot be the conclusive evidence as to existence of Partnership.

b) Sharing of profits implies sharing of losses as well, unless agreed otherwise.

c) A person may become a Partner only in profits and not for losses by agreement between all Partners.

d) Ratio in which profits and losses will be shared is based on agreement amongst the Partners.

e) Though sharing of profits of a business is essential, it does not mean that everyone who participates in the profits of a business is necessarily a Partner, e.g. a Manager, as a part of his remuneration, may be given a share in profits of the business. He does not thereby become a Partner.

BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL: The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership Law. In other words, there should be a binding contract of mutual agency between the partners.

- (a) A Partner is both an agent and a principal.
- (b) He can, by his acts, bind other Partners and is in turn bound by acts of other Partners.
- (c) It is not essential that all Partners should actively participate in business. Business may be managed by one or more Partners and remaining Partners will be bound by their acts provided such acts relate to carrying on Firm's business and have been done in the Firm's name.

It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

Question 2:

(4 Marks)

Mr. M, Mr. N and Mr. P were partners in a firm, which was dealing in refrigerators. On 1st October, 2018, Mr. P retired from partnership, but failed to give public notice of his retirement. After his retirement, Mr. M, Mr. N and Mr. P visited a trade fair and enquired about some refrigerators with latest techniques. Mr. X, who was exhibiting his refrigerators with the new techniques was impressed with the interactions of Mr. P and requested for the visiting card of the firm. The visiting card also included the name of Mr. P as a partner even though he had already retired. Mr. X. supplied some refrigerators to the firm and could not recover his dues from the firm. Now, Mr. X wants to recover the dues not only from the firm, but also from Mr. P. Analyse the above case in terms of the provisions of the Indian Partnership Act, 1932 and decide whether Mr. P is liable in this situation.

Answer 2:

1. A retiring partner continues to be liable to third party for acts of the firm after his retirement until public notice of his retirement has been given either by himself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was partner.
2. Also, if the partnership is at will, the partner by giving notice in writing to all the other partners of his intention to retire will be deemed to be relieved as a partner without giving a public notice to this effect.
3. Also, as per section 28 of the Indian Partnership Act, 1932, where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

In the light of the provisions of the Act and facts of the case, Mr. P is also liable to Mr. X.

Question 3:

(5 Marks)

What is Partnership Deed and state the information contained therein?

Answer 3:

1. Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership.

2. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes. The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.
3. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.
4. Where the partnership comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.
5. Partnership deed may contain the following information: -
 - *Name of the partnership firm.
 - *Names of all the partners.
 - *Nature and place of the business of the firm.
 - *Date of commencement of partnership.
 - * Duration of the partnership firm.
 - * Capital contribution of each partner.
 - *Profit Sharing ratio of the partners.
 - * Admission and Retirement of a partner.
 - *Rates of interest on Capital, Drawings and loans.
 - * Provisions for settlement of accounts in the case of dissolution of the firm.
 - * Provisions for Salaries or commissions, payable to the partners, if any.
 - *Provisions for expulsion of a partner in case of gross breach of duty or fraud.
 - *A partnership firm may add or delete any provision according to the needs of the firm.

Question 4:

(3 Marks)

With reference to the provisions of Indian partnership Act, 1932 explain the various effects of insolvency of a partner.

Answer 4:

Insolvency [Sec. 34]:

- (a) When a Partner in a Firm is adjudicated insolvent, he ceases to be a Partner on the date of the order, irrespective of whether the Firm is dissolved or not.
- (b) When under a contract between the Partners, the Firm is not dissolved by the insolvency of a Partner, the estate of such Partner is NOT liable for any act of the Firm.
- (c) Also, further the Firm is NOT liable for any act of the insolvent, done after the date on which the order or adjudication is made.

Question 5:

Discuss the liability of a partner for the act of the firm and liability of firm for act of a partner to third parties as per Indian Partnership Act, 1932.

Question 5:**(4 Marks)****LIABILITY TO THIRD PARTIES (SECTION 25 TO 27)**

The question of liability of partners to third parties may be considered under different heads. These are as follows:

1. **LIABILITY OF A PARTNER FOR ACTS OF THE FIRM (SECTION 25):** Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Example: Certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place. It was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.

2. **LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER (SECTION 26):** Where, by the wrongful act or omission of a partner in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Example: One of the two partners in a coal mine acted as a manager and was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result, thereof, an injury was caused to a workman. The other partner was also held responsible for the same.

3. **LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS (SECTION 27):** Where-

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Example: A, B, and C are partners in a place for car parking. P stands his car in the parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.

Analysis of section 27:

It may be observed that the working of the two clauses of Section 27 is designed to bring out clearly an important point of distinction between the two categories of cases of misapplication of money by partners.

Clause (a) covers the case where a partner acts within his authority and due to his authority as partner, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

On the other hand, the provision of clause (b) would be attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.

The firm would be liable in both the cases.

Question 6:

(3 Marks)

Mahesh, Suresh and Dinesh are partners in a trading firm. Mahesh, without the knowledge or consent of Suresh and Dinesh borrows himself Rs.50,000 from Ramesh, a customer of the firm, in the name of the firm. Mahesh, then buys some goods for his personal use with that borrowed money. Can Mr. Ramesh hold Mr. Suresh & Mr. Dinesh liable for the loan? Explain the relevant provisions of the Indian Partnership Act, 1932.

Implied authority of a partner

Yes, as per sections 19 and 22 of the Indian Partnership Act, 1932, every partner has an implied authority to bind every other partner for acts done in the name of the firm, provided the same falls within the ordinary course of business (within the implied authority of firm) and is done in a usual manner. Mahesh has a right to borrow the money of Rs. 50,000/- from Ramesh on behalf of his firm in the usual manner. Since, Ramesh has no knowledge that the amount was borrowed by Mahesh without the consent of the other two partners, Mr. Suresh and Mr. Dinesh, he can hold both of them (Suresh and Dinesh) liable for the re-payment of the loan.

Question 7:

(2 Marks)

What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?

Answer 7:

Goodwill: The term "Goodwill" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act lays down that goodwill of a business is to be regarded as a property of the firm.

Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Question 8:

(4 Marks)

“Dissolution of a Firm is different from Dissolution of Partnership”. Discuss.

Answer 8:

DISSOLUTION OF FIRM VS DISSOLUTION OF PARTNERSHIP

Basis Of Difference		Dissolution Of Firm	Dissolution Of Partnership
Continuation of business		It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.

Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
Final closure of	It involves final closure of books of	It does not involve final closure of