d) Void

Answers

1	b)	2	c)	3	a)	4	d)

Theoretical Questions

1) *"All contracts are agreements, but all agreements are not contracts". Comment*

Answer:-

An agreement comes into existence when one party makes a proposal or offer to the other party and that other party gives his acceptance to it. A contract is an agreement enforceable by law. It means that to become a contract an agreement must give rise to a legal obligation i.e. duty enforceable by law. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. There can be agreements which are not enforceable by law, such as social, moral or religious agreements. The agreement is a wider term than the contract. All agreements need not necessarily become contracts but all contracts shall always be agreements.

All agreements are not contracts: When there is an agreement between the parties and they do not intend to create a legal relationship, it is not a contract. For example, A invites B to see a football match and B agrees. But A could not manage to get the tickets for the match, now B cannot enforce this promise against A i.e., no compensation can be claimed because this was a social agreement where there was no intention to create a legal relationship.

All contracts are agreements: For a contract there must be two things (a) an agreement and (b) enforceability by law. Thus, existence of an agreement is a pre-requisite existence of a contract. Therefore, it is true to say that all contracts are agreements.

Thus, we can say that there can be an agreement without it becoming a contract, but we can't have a contract without an agreement.

2) *Define the term "Acceptance'. Discuss the legal provisions relating to communication of acceptance.*

Answer:-

According to Section 2(b), the term 'acceptance' is defined as follows:

"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. "

An acceptance in order to be valid must be absolute, unqualified, accepted according to the mode if any prescribed within reasonable time and communicated to offeror. Acceptance can also be made by way of conduct.

The legal provisions relating to communication of acceptance are contained in Section 4.

The communication of an acceptance is complete:

a) as against the proposer, when it is put in a course of transmission to him, so as to be out of power of the acceptor.
b) as against the acceptor, when it comes to the knowledge of the proposer.

Example: A proposes, by letter, to sell a house to B at a certain price:

a) The communication is complete when B receives the letter.
b) B accepts the proposal by a letter sent by post. The communication is complete: as against A, when letter is posted.
as against B when the letter is received by A.

Section 3 of the Act prescribes, in general terms, two modes of communication, namely:

a) by any act or
b) by omission intending thereby communicate to the other or which has the effect of communicating it to the other.

The first method would include any conduct and words whether written or oral. Written words would include letters, telegrams, talex messages, advertisements, etc. Oral words would include telephone messages. Any conduct would include positive acts or signs so that the other person understands what the person acting or making signs means to say or convey. Omission would exclude silence but include such conduct or forbearance on one's part that the other person takes it as his willingness or assent. These are not the only modes of communication of the intention of the parties. There are other means as well, e.g., if you as the owner, deliver the goods to me as the buyer thereof at a certain price, this transaction will be understood by everyone, as acceptance by act or conduct, unless there is an indication to the contrary.

The phrase appearing in Section 3 "which has the effect of communicating it", clearly refers to an act or omission or conduct which may be indirect but which results in communicating an acceptance or non-acceptance. However, a mere mental but unilateral act of assent in one's own mind does not tantamount to communication, since it cannot have the effect of communicating it to the other.

3) Distinction between Void and Illegal Agreements

Answer:-

Void and Illegal Agreements: According to Section 2(g) of the Indian Contract Act, an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void. Despite the similarity between an illegal and a void agreement that in either case the agreement is void and cannot be enforced by law, the two differ from each other in the following respects:

a) **Scope**: An illegal agreement is always void while a void agreement may not be illegal being void due to some other factors e.g. an agreement the terms of which are uncertain is void but not illegal.

b) **Effect on collateral transaction**: If an agreement is merely void and not illegal, the collateral transactions to the agreement may be enforced for execution but collateral transaction to an illegal agreement also becomes illegal and hence cannot be enforced.

c) **Punishment**: Unlike illegal agreements, there is no punishment to the parties to a void agreement.

d) **Void ab-initio**: Illegal agreements are void from the very beginning but sometimes valid

e) contracts may subsequently become void.

4) Define consideration. State the characteristics of a valid consideration

Answer :-

Definition of Consideration-Section 2(d) : "When at the desire of the promisor, the promise or any other person has done, or does or abstains from doing of promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise"

The essential characteristics of a valid consideration are as follows:

a) Consideration must move at the desire of the promisor
b) It may proceed from the promisee or any other person on his behalf.
c) It may be executed or executory. It may be past, present or future.
d) It must be real and have some value in the eyes of law.
e) It must not be something which the promisor is already legally bound to do.
f) It must not be unlawful, immoral or opposed to public policy.
g) Inadequacy of consideration does not invalidate the contract.

Thus, need not be proportionate to the value of the promise of the other.

It may comprise of some benefit, profit, right or interest accruing to one or some loss, detriment, obligation or responsibility undertaken by the other.

5) "No consideration, no contract" Comment

Answer:-

No consideration, no contract: Every agreement, to be enforceable by law must be supported by valid consideration. An agreement made without any consideration is void. A gratuitous promise may form a subject of a moral obligation and may be binding in honour but it does not cause a legal responsibility. For example, A promises to pay `100 to B. This promise cannot be enforced by B because he is not giving anything to A for this promise. No consideration, no contract is a general rule. However Section 25 of the Indian Contract Act provides some exceptions to this rule, where an agreement without consideration will be valid and binding. These exceptions are as follows:

a) **Agreement made on account of natural love and affection:** Section 25 (1) provides that if an agreement is (i) in writing (ii) registered under the law and (iii) made on account of natural love and affection (iv) between the parties standing in a near relation to each other, it will be enforceable at law even if there is no consideration. Thus, where A, for natural love and affection, promises to give his son, B, ₹10,000 in writing and registers it. This is a valid contract.

b) **Compensation for services voluntarily rendered:** Section 25(2) provides that something which the promisor was legally compelled to do; (iii) and the promisor was in existence at the time when the act was done whether he was competent to contract or not (iv) the promisor must agree now to compensate the promise. Thus when A finds B's purse and

gives it to him and B promises to give A ₹ 50, this is a valid contract

c) **Promise to pay time-barred debts (Section. 25 (3))**: Where there is an agreement ... writing and signed by the debtor or by his agent, to pay wholly or in part a ... debt, the agreement is valid and binding even though there is no consideration ... B ₹ 1,000 but the debt is lapsed due to time-bar and A further makes a written ... pay ₹ 500 on account of this debt, it constitutes a valid contract

d) **Contract of agency (Section 185)**: No consideration is necessary to create an agency

e) **Completed gift (Explanation 1 to Section 25)**: A completed gift needs no consideration. Thus if a person transfers some property by a duly written and registered deed ... cannot claim back the properly subsequently on the ground of lack of consideration

6) To form a valid contract, consideration must be adequate". Comment

Answer:-

The law provides that a contract should be supported by consideration. So long as consideration exists, the Courts are not concerned to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced ***(Bolton v. Madden)***. Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

According to Explanation 2 to Section 25 of the Indian Contract Act, 1872, an agreement ... which the consent of the promisor is freely given is not void merely because the consideration is inadequate but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given

7) "Mere silence does not amount to fraud". Discuss.

Answer:-

Mere silence not amounting to fraud: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud.

It is a rule of law that mere silence does not amount to fraud. A contracting party is not bound t o disclose the whole truth to the other party or to give him the whole information in his possession affecting the subject matter of the contract.

The rule is contained in explanation to Section 17 of the Indian Contract Act which clearly states the position that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

Exceptions to this rule:

a) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).

b) Where the silence is, in itself, equivalent to speech.

8) "Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss.

Answer:-

Minor can be a beneficiary or can take benefit out of a contract: Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

Example: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

9) "An agreement, the meaning of which is not certain, is void". Discuss.

Answer:-

Agreement - the meaning of which is uncertain (Section 29): An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement Is valid.

For example, A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.

10) Who are disqualified persons to do the contract?

Answer:-

Contract by disqualified persons: Besides minors and persons of unsound mind, there are also other persons who are disqualified from contracting, partially or wholly, so that the contracts by such person are void. Incompetency to contract may arise from political status, corporate status, legal status, etc. The following persons fall in this category: Foreign Sovereigns and Ambassadors, Alien enemy, Corporations, Convicts, Insolvent etc.

11) "The basic rule is that the promisor must perform exactly what he has promised to perform." Explain stating the obligation of parties to contracts.

Answer:-

Obligations of parties to contracts (Section 37)

The parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law.

Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract.

Example 1: A promises to deliver goods to B on a certain day on payment of ₹ 1,00,000. A dies

before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ₹ 1,00,000 to A's representatives.

Example 2: A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B because it involves use of personal skill.

Analysis of Section 37

A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.

The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in Section 37.

12) Discuss the effect of accepting performance from third person.

Answer:

Effect of accepting performance from third person (Section 41)

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

That is, performance by a stranger, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised not ratified the act of the third party.

Example: A received certain goods from B promising to pay ₹ 100,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays ₹ 60,000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of ₹ 100,000/- whether he can do so? Advice.

As per Section 41 of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party. Therefore, in the present instance, B can sue only for the balance amount i.e., ₹ 40,000/- and not for the whole amount.

13) "When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract". Explain.

Answer:-

Effect of a Refusal of Party to Perform Promise

According to Section 39, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Example: A, singer, enters into a contract with B, the Manager of a theatre, to sing at his

theatre two nights in every week during next two months, and B engages to pay her ₹ 10000 for each night's performance. On the sixth night, A willfully absents herself from the threatre.

B Is at liberty to put an end to the contract.

Analysis of Section 39

From language of Section 39 it is clear that in the case under consideration, the following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) to indicate by words or by conduct that he is interested in its continuance.

In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

14) "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Discuss stating also the effect of anticipatory breach on contracts

Answer:-

An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach. The law in this regard has very well summed up in **Frost v. Knight and Hochster v. DelaTour:**

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows: "When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, but words or conduct, his acquiescence in its continuance."

Effect of anticipatory breach: The promisee is excused from performance or from further performance. Further he gets an option:

a) To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance; or

b) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the, contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

15) "When a contract has been broken, the party who suffers by such a breach is entitled to receive compensation for any loss or damage caused to him". Discuss.

Answer:-

Compensation for loss or damage caused by breach of contract (Section 73)

When a contract has been broken, the party who suffers by such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which

the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In view of above, the statement given in the question seems to be incorrect.

16) ***"Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain.***

Answer:-

Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculations and the necessity to convince outside parties.

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

In terms of Section 74 of the Act "where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, **the party complaining of the breach is entitled,** whether or not actual damages or loss is proved to have been caused thereby, **to receive from the other party who has broken the contract, a reasonable compensation not exceeding the amount so named,** or as the case may be the penalty stipulated for.

Explanation to Section 74

A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

In terms of Section 74, courts are empowered to reduce the sum payable on breach whether it is 'penalty' or "liquidated damages" provided the sum appears to be unreasonably high.

Sri ChunniLal vs. Mehta & Sons Ltd (Supreme Court)

Supreme Court laid down the ratio that the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even then the court has powers to reduce the amount if it considers it reasonable to reduce.

17) ***Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts.***

Answer:

Essential characteristics of a contingent contract:

A contract may be absolute or contingent. A contract is said to be absolute when the promisor undertakes to perform the contract in all events. A contingent contract, on the other hand "is a contract to do or not to do something, if some event, collateral to such contract does or does not happening (Section 31). It is a contract in which the performance becomes due only upon the happening of some event which may or may not happen. For example, A contracts to pay B ₹10,000 if he is elected President of a particular association. This is a contingent contract. The essential characteristics of a contingent contract may be listed as follows:

a) There must be a contract to do or not to do something,
b) The performance of the contract must depend upon the happening or non-happening of some event.
c) The happening of the event is uncertain.
d) The even on which the performance is made to depend upon is an event collateral to the contract
e) i.e. it does not form part of the reciprocal promises which constitute the contract. The even should neither be a performance promised, nor the consideration for the promise.
f) The contingent even should not be the mere will of the promisor. However, where the event is within the promisor's will, but not merely his will, it may be a contingent contract.

The rules regarding the contingent contract are as follows"

a) Contingent contract dependent on the happening of an uncertain future cannot be enforced until the even has happened. If the even becomes impossible, such contracts become void. (Sec.32).

b) Where a contingent contract is to be performed if a particular event does not happening performance can be enforced only when happening of that even becomes impossible (Sec. 33).

c) If a contract is contingent upon, how a person will act at an unspecified time the even shall be considered to become impossible; when such person does anything which renders it impossible that he should so act within any definite time or otherwise than under further contingencies. (Section 34,35).

d) The contingent contracts to do or not to do anything if an impossible even happens are void whether or not the fact is known to the parties (Sec. 36).

18) Explain the-term 'Quasi Contracts' and state their characteristics.

Answer:-

Quasi Contracts: Under certain special circumstances obligations resembling those created by a contract are imposed by law although the parties have never entered into a contract. Such obligations imposed by law are referred to as 'Quasi-contracts'. Such a contract resembles with a contract so far as result or effect is concerned but it has little or no affinity with a contract in respect of mode of creation. These contracts are based on the doctrine that a person shall not be allowed to enrich himself unjustly at the expense of another. The salient features of a quasi-contract are:

a) it does not arise from any agreement of the parties concerned but is imposed by law.
b) Duty and not promise is the basis of such contract.
c) The right under it is always a right to money and generally though not always to a liquidated sum of money.
d) Such a right is available against specific person(s) and not against the whole world.
e) A suit for its breach may be led in the same way as in case of a complete contract.

Theoretical Questions

(SOGA)

1) *What are the consequences of "destruction of goods" under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected.*

Answer:-

Destruction of Goods-Consequences:

a) In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract, then the contract is void ab initio. This section is based on the rule that where both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the contract is void.

b) In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the par of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.

It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver the goods.

2) *In what ways does a "Sale" differ from "Hire-Purchase"?*

Answer:-

Distinction between 'Sale' and 'Hire Purchase'

a) In case of hire purchase the agreement is that the hirer regularly pays the various installments agreed between the parties. In Sale the payment-may be made cash -down or through installments.

b) The subject matter of the hire, on payment of the last installment, shall become the property of the hirer, if such installments are not paid, the article will remain the property of the hire-vendor (seller) and the hire vendor will be entitled to regain possession thereof. In Sale, the property in goods is transferred to the buyer immediately on signing the contract.

c) A hire purchase agreement is both a bailment and an option to buy. In case of Sale it is not so.

d) In case of hire purchase the hirer cannot sell the article to a third party. In Sale the purchaser can do so. This is based on the concept of ownership.

3) *State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930. Examine whether there should be an agreement between the parties in order to constitute a sale under the said Act.*

Answer:-

Essentials of Contract of Sale

The following elements must co-exist so as to constitute a contract of sale of goods under the Sale of Goods Act, 1930.

a) There must be at least two parties
b) The subject matter of the contract must necessarily be goods
c) A price in money (not in kind) should be paid or promised.
d) A transfer of property in goods from seller to the buyer must take place.
e) A contract of sale must be absolute or conditional [section 4(2)].
f) All other essential elements of a valid contract must be present in the contract of sale.

4) *What do you understand by "Caveat-Emptor" under the sales of goods Act,1930? What are the Exceptions to the rule?*

Answer:-

A Caveat emptor' means "let the buyer beware" i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

The rule of caveat emptor does not apply in the following cases:

a) Fitness for buyer's purpose: Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which he requires the goods and relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply, the seller must supply the goods which shall be fit for the buyer's purpose. (Section16 (1).

b) Sale under a patent or trade name: In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose (Section 16(1).

c) Merchantable quality: Where goods are bought by description from a seller who deals in goods of that description (whether he is in the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. (Section 16(2).

d) Usage of trade: An implied warranty or condition as to qualify or fitness for a particular purpose may be annexed by the usage of trade. (Section 16(3).

e) Consent by fraud: Where the consent of the buyer, in a contract of sale, is obtained by the seller by fraud or where the seller knowingly conceals a defect which could not be discovered on a reasonable examination, the doctrine of caveat emptor does not apply.

5) ***What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operatives under the said Act.***

Answer:-

The-following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;

a) That the bulk shall correspond with the sample in quality;
b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
c) That the goods shall be free from any defect, rendering them un merchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].

Implied Warrants:

a) **Warranty of quiet possession [Section 14(b)]:** In a contract of sale, unless there is a contrary intention, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. If the buyer is in any way distributed in the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.

b) **Warranty of freedom from encumbrances [Section 14(c)]:** The buyer is entitled to a further warranty that the goods are not subject to any charge or encumbrance in favour of a third party. If his possession is in any way disturbed by reason of the existence of any charge or encumbrances on the goods in favour of any third party, he shall have a right to claim damages for breach of this warranty.

c) **Warranty as to quality or fitness by usage of trade [Section 16(3)]**. An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade.

d) **Warranty to disclose dangerous nature of goods:** Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer and that the buyer is ignorant of the danger, he must warn the buyer of the probable danger, otherwise he will be liable in damages.

6) ***"There is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale." Discuss the significance and State exceptions, if any.***

Answer:-

The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maximum 'Caveat Emptor' meaning thereby 'Let the buyer be aware'. In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express terms of the contract. The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

There are, however, certain exceptions to the rule which are stated as under:

a) Where the buyer expressly or by implication, makes known to the seller the particular purpose for which he needs the goods and depends on the skill and judgement of the seller whose business is to supply goods of that description, there is an implied condition

that the goods shall be reasonably fit for that purpose;

b) If the buyer purchasing an article for a particular use is suffering from an abnormality and it is made known to the seller at the time of sale, implied condition of fitness will apply.

c) If the buyer purchases an article under its patent or other trade name and relies on seller's skills and judgement which he makes known to him, the implied condition that are articles are fit for a particular purpose shall apply.

d) If the goods can be used for a number of purposes the buyer must tell the seller the particular purpose for which he required the goods otherwise implied condition of fitness of goods for a particular purpose will not apply.

e) Where the goods are bought by description from a seller who deals in goods of that description whether he is the manufacturer or producer or not, there is an implied condition that the goods are of merchantable quality.

f) An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade or custom;

In a sale by sample there is an implied condition that
i) The bulk shall correspond with the sample in quality;
ii) The buyer shall have reasonable opportunity of comparing the bulk with the sample; and
iii) The goods shall be free from any defect, rendering them merchantable;

g) In the case of eatables and provisions in addition to the implied condition of merchantability, there is an implied condition that the goods shall be wholesome.

7) ***Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Explain.***

Answer:-

Difference between Condition and Warranty:-

a) A condition is a stipulation essential to the main purpose of the contract whereas warranty is a stipulation collateral to the main purpose of the contract.
b) Breach of condition gives rise to a right to treat the contract as repudiated whereas in case of breach of warranty, the aggrieved party can claim damage only.
c) Breach of condition may be treated as breach of warranty whereas a breach of warranty cannot be treated as breach of condition.

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.
b) Where the buyer elects to treat the breach of condition as breach of a warranty.
c) Where the contract of sale is non-severable and the buyer has accepted the whole goods or any part thereof.
d) Where the fulfillment of any condition or warranty is excused by law by reason of impossibility or otherwise.

5) ***"Nemo Dat Quod Non Habet"–"None can give or transfer goods what he does not himself own." Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930.***

Answer:-

Exceptions to the Rule Nemo dat Quod Non Habet:

The term means, "none can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:

a) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely;
   i) if he was in possession of the goods or documents with the consent of the owner;
   ii) if the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
   iii) if the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell. (Proviso to Section 27).

b) **Sale by one of the joint owners:** If one of the several joint owners of goods has the sole possession of them with the permission of the others the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that seller has no authority to sell. (Section 28)

c) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).

d) **Sale by one who has already sold the goods but continues in possession there of:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith without notice of the previous sale, he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)]

e) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section 30(2)].

f) **Sale by an unpaid seller:** Where on unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54(3)].

g) **Sale under the provisions of other Acts:**
   i) Sale by an official Receiver or liquidator of the company will give the purchaser a valid

title.

ii) Purchase of goods from a finder of goods will get a valid title under circumstances.

iii) Sale by a Pawnee under default of Pawnor will give valid title to the purchaser.

9) ***What are the rules related to Acceptance of Delivery of Goods?***

Answer:-

Rules related to acceptance of delivery: Acceptance is deemed to take place when the buyer

a) intimates to the seller that he had accepted the goods; or
b) does any act to the goods, which is inconsistent with the ownership of the seller; or
c) Retains the goods after the lapse of a reasonable time, without intimating to the seller that he has rejected them (Section 42).

Ordinarily, a seller cannot compel the buyer to return the rejected goods; but the seller is entitled to a notice of the rejection. Where the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not take delivery within a reasonable time, he is liable to the seller for any loss occasioned by the goods(section 43 and section 44)

10) ***Explain the provisions of law relating to unpaid seller's 'right of lien' and distinguish it from the "right of stoppage the goods in transit".***

Answer:-

Right of lien of an unpaid seller

The legal provisions regarding the right of lien of an unpaid seller has been stated from Sections 47 to 49 of the Sale of Goods Act, 1930 which may be enumerated as follows :

a) According to Section 47 the unpaid seller of the goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases namely :
   i) where the goods have been sold without any stipulation as to credit.
   ii) where the goods have been sold on credit, but the term of credit has expired; or
   iii) where the buyer becomes insolvent.

   The seller may exercise his right of lien not withstanding that he is in possession of the goods as agent or bailee for the buyer.

b) Section 48 states that where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

c) According to Section 49 the unpaid seller loses his lien on goods:
   i) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.
   ii) when the buyer or his agent lawfully obtains possession of the goods;
   iii) by waiver thereof

The unpaid seller of the goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree to the price of the goods.

Right of lien and Right to stoppage the goods in transit; distinction:

a) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.
b) Seller should be in possession of goods under lien while in stoppage in transit (i) Seller should have parted with the possession (ii) possession should be with the carrier and (iii) Buyer has not acquired the possession.
c) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.
d) Right of stoppage in transit begins when the right of lien ends. Thus the end of the right of lien is starting point of the right of stoppage the goods in transit.

11) *What do you understand by the term "unpaid seller" under the Sale of Goods Act, 1930? When can an unpaid seller exercise the right of stoppage of goods in transit?*

Answer:-

Unpaid Seller

According to Section 45 of the Sale of Goods Act, 1930 the seller of goods is deemed to be an 'Unpaid Seller' when-

a) The whole of the price has not been paid or tendered.
b) a bill of exchange or other negotiable instrument has been received as conditional payment, and it has been Dishonored.

Right of stoppage of goods in transit

When the unpaid seller has parted with the goods to a carrier and the buyer has become insolvent, he can exercise this right by asking the carrier to return the goods back, or not to deliver the goods to the buyer.

However, the right of stoppage in transit is exercised only when the following conditions are fulfilled:

a) The seller must be unpaid.
b) The seller must have parted with the possession of goods.
c) The goods must be in the course of transit.
d) The buyer must have become insolvent.
e) The right is subject to provisions of the Act

12) *When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act? Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?*

Answer:-

A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-

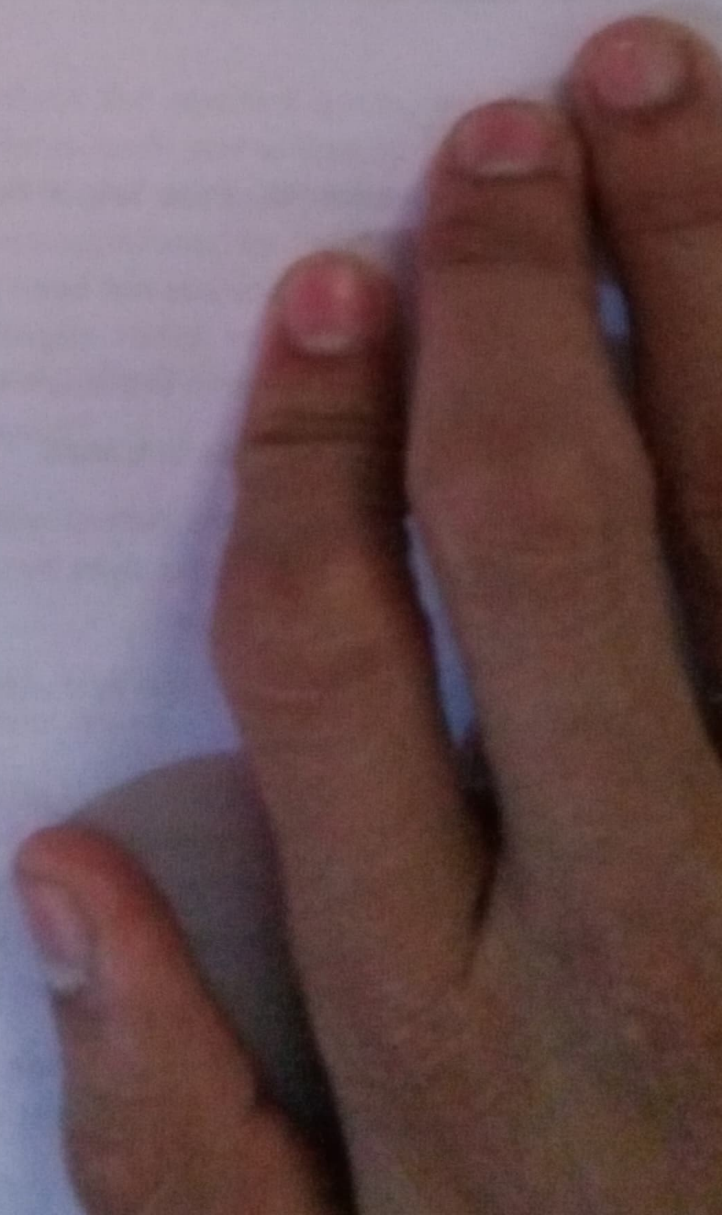
a) the goods have been sold without any stipulation as to credit;
b) the goods have been sold on credit, but the term of credit has expired;
c) the buyer becomes insolvent.

The unpaid seller can exercise his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee

for the buyer.

Termination of lien: An unpaid seller losses his right of lien thereon-

a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
b) When the buyer or his agent lawfully obtains possession of the goods;



Theoretical Questions (IPA)

1) *Explain the provisions of the Indian Partnership Act, 1932 relating to the creation of Partnership by holding out.*

Answer:-

Partnership by holding out is also known as partnership by estoppel. 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.

A person may himself, by his words or conducts have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

Example: X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained Silent. Z, a trader believing A as partner supplied 100 T.V sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Here, in the given case, A, the Manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

2) *What is the true test of partnership*

Answer:-

Mode of determining existence of partnership (Section 6): In determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

For determining the existence of partnership, it must be proved.

a) There was an **agreement** between all the persons concerned
b) The agreement was to **share the profits** of a business and
c) the business was carried on **by all or any of them** acting for all.

a) **Agreement:** Partnership is created by agreement and by status (Section 5). The relation of partnership arises from contract and not from status; and in particular, the members of a Hindu Undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

b) **Sharing of Profit:** Sharing of profit is an essential element to constitute a Partnership. But, it is only a prima facie evidence and not conclusive evidence, in that regard. The sharing of profits or of gross returns accruing from property by persons holding joint or common interest in the property would not by itself make such persons partners. Although the right to participate in profits is a strong test of partnership, and there may be cases where, upon a simple participation in profits, there is a partnership, yet whether the relation does or does not exist must depend upon the whole contract between the parties.

Where there is an express agreement between partners to share the profit of a business and

the business is being carried on by all or any of them acting for all, there will be no difficulty in the light of provisions of Section 4, in determining the existence or otherwise of partnership.

But the task becomes difficult when either there is no specific agreement or the agreement is such as does not specifically speak of partnership. In such a case for testing the existence or otherwise of partnership relation, Section 6 has to be referred.

According to Section 6, regard must be had to the real relation between the parties as shown by all relevant facts taken together. The rule is easily stated and is clear but its application is difficult. Cumulative effect of all relevant facts such as written or verbal agreement, real intention and conduct of the parties, other surrounding circumstances etc., are to be considered while deciding the relationship between the parties and ascertaining the existence of partnership.

c) **Agency:** Existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. Each partner carrying on the business is the principal as well as an agent of other partners. So, the act of one partner done on behalf of firm, binds all the partners. If the elements of mutual agency relationship exist between the parties constituting a group formed with a view to earn profits by running a business, a partnership may be deemed to exist.

3) Enumerate the differences between Partnership and Joint Stock Company.

Answer:-

Basis of difference	Partnership	Joint Stock Company
Legal status	A firm is not legal entity i.e., it has no legal personality distinct from the personalities of its constituent members.	A company is a separate legal entity distinct from its members (Salomon v. Salomon).
Agency	In a firm, every partner is an agent of the other partners, as well as of the firm.	In a company, a member is not an agent of the other members o of the company; his actions do not bind either.
Distribution of profits	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members. Some portion of the profits, but generally not the entire profit, become distributable among the shareholders only when dividends are declared.
Extent of liability	In a partnership, the liability of the Partners are unlimited. This means that each partner is liable for debts of a firm incurred in the course of the business of the firm and these debts can be recovered from his private property, if the joint estate is insufficient to meet	In a company limited by shares, the liability of a shareholder is limited to the amount, if any, unpaid on his shares, but in the case of a guarantee company, the liability is limited to the amount for which he has agreed to be liable. However, there may be

	them wholly.	companies where the liability of members is unlimited.
Property	The firm's property is that which is the "joint estate" of all the partners as distinguished from the 'separate' estate of any of them and it does not belong to a body distinct in law from its members.	In a company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.
Transfer of shares	A share in a partnership cannot be Transferred without the consent of all the partners.	In a company a shareholder may transfer his shares, subject to the provisions contained in its Articles. In the case of public limited companies whose shares are quoted on the stock exchange, the transfer is usually unrestricted.
Management	In the absence of an express agreement to the contrary, all the partners are entitled to participate in the management.	Members of a company are not entitled to take part in the management unless they are appointed as directors, in which case they may participate. Members, however, enjoy the right of attending general meeting and voting where they can decide certain questions such as election of directors, appointment of auditors, etc.
Registration	Registration is not compulsory in the case of partnership.	A company cannot come into existence unless it is registered under the Companies Act, 2013.
Winding up	A partnership firm can be dissolved at any time if all the partners agree.	A company, being a legal person is either wind up by the National Company law tribunal or its name is struck of by the Registrar of Companies.
Number of membership	According to section 464 of the Companies Act, 2013, the number of partners in any association shall not exceed 100. However, the Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.	A private company may have as many as 200 members but not less than two and a public company may have any number of members but not less than seven. A private Company can also be formed by one person known as one person Company.

Duration of existence	Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of the firm.	A company enjoysa perpetual succession.

4) What do you mean by "implied authority" of the partners in a firm?

Answer:-

Implied Authority Of Partner As Agent Of The Firm (Section 19):

Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

a) Submit a dispute relating to the business of the firm to arbitration;
b) open a banking account on behalf of the firm in his own name;
c) compromise or relinquish any claim or portion of a claim by the firm;
d) withdraw a suit or proceedings filed on behalf of the firm;
e) admit any liability in a suit or proceedings against the firm;
f) acquire immovable property on behalf of the firm;
g) transfer immovable property belonging to the firm; and
h) enter into partnership on behalf of the firm

Mode Of Doing Act To Bind Firm (Section 22): In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner Expressing or implying an intension to bind the firm.

5) State the modes by which a partner may transfer his interest in the firm in favour of another person under the Indian Partnership Act, 1932. What are the rights of such a transferee?

Answer:-

Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property, but as the partnership relationship is based on the mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner.

The rights of such a transferee are as follows:

a) During the continuance of partnership, such transferee is not entitled
b) to interfere with the conduct of the business,
c) to require accounts, or
d) to inspect books of the firm.

He is only entitled to receive the share of the profits of the transferring partner and he is

bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts.

On the dissolution of the Firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

a) to receive the share of the assets of the firm to which the transferring partner was entitled, and

b) for the purpose of ascertaining the share,

He is entitled to an account as from the date of the dissolution. By virtue of Section 31, no person can be introduced as a partner in a firm without the consent of all the partners. A partner cannot by transferring his own interest, make anybody else a partner in his place, unless the other partners agree to accept that person as a partner. At the same time, a partner is not debarred from transferring his interest. A partner's interest in the partnership can be regarded as an existing interest and tangible property which can be assigned.

6) ***Whether a minor may be admitted in the business of a partnership firm? Explain the rights of a minor in the partnership firm.***

Answer:-

A minor cannot be bound by a contract because a minor's contract is void and not merely voidable. Therefore, a minor cannot become a partner in a Firm because partnership is founded on a contract. Though a minor cannot be a partner in a Firm, he can nonetheless be admitted to the benefits of partnership under Section 30 of the Act. In other words, he can be validly given a share in the partnership profits. When this has been done and it can be done with the consent of all the partners then the rights and liabilities of such a partner will be governed under Section 30 as follows:

Rights:

a) A minor partner has a right to his agreed share of the profits and of the firm.
b) He can have access to, inspect and copy the accounts of the firm.
c) He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
d) On attaining majority he may within 6 months elect to become a partner or not to become a partner. If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor. If he does not, then his share is not liable for any acts of the Firm after the date of the public notice served to that effect.

7) ***What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? What are the consequences of non-registration?***

Answer:-

Application for Registration (Section 58):

a) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is

Situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

i) The firm's name

ii) The place or principal place of business of the firm,
iii) The names of any other places where the firm carries on business,
iv) the date when each partner joined the firm,
v) the names in full and permanent addresses of the partners, and (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf

b) Each person signing the statement shall also verify it in the manner prescribed.
c) A firm name shall not contain any of the following words, namely:-
'Crown', Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm name by order in writing.

Non consequences of non-registration: Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

a) **No suit in a civil court by firm or other co-partners against third party:** The firm o any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.

b) **No relief to partners for set-ou of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-ou, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.

c) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

d) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

8) When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

Answer:-

Dissolution of Firm: The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes in capacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest

may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners

Dissolution of a Firm may take place (Section 39 - 44)

a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
d) subject to agreement between the parties, on the happening of certain contingencies, such as:
   i) effluence of time;
   ii) completion of the venture for which it was entered into;
   iii) death of a partner;
   iv) Insolvency of a partner.
e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
f) by intervention of court in case of:
   i) a partner becoming the unsound mind;
   ii) permanent incapacity of a partner to perform his duties as such;
   iii) Misconduct of a partner affecting the business;
   iv) willful or persistent branches of agreement by a partner;
   v) transfer or sale of the whole interest of a partner;
   vi) improbability of the business being carried on save at a loss;
   vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

Theoretical Questions (LLP)

1) *Examine the concept of LLP.*

Answer:-

Meaning –

A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organizing their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Concept of "limited liability partnership"

a) The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.

b) The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

c) Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.

2) *Enumerate the various characteristics of the LLP.*

Answer:-

LLP registered with the Registrar under the LLP Act, 2008 has the following characteristics:

a) Body Corporate
b) Perpetual Succession
c) Separate legal entity
d) Mutual Agency
e) LLP Agreement
f) Artificial Legal person
g) Common Seal
h) Limited liability
i) Management of business
j) Minimum and maximum number of members
k) Business for profit only
l) Investigation
m) Compromise or Arrangement
n) Conversion into LLP
o) E-filing of documents
p) Foreign LLPs

3) *State the necessities required for incorporation of the LLP.*

Answer:-

Limited Liability Partnerships are bodies corporate and must be registered with the Registrar of LLP appointed under the LLP Act, 2008 after following the provisions specified in the LLP Act, in a similar way to setting up a company with distinct name. The LLP cannot have the same name with any other LLP, Partnership Firm or Company.

To create a LLP proper formation documents must be filed with the registrar along with the necessary filing fees.

Steps to incorporate LLP-

a) Name reservation

i) The first step to incorporate Limited liability Partnership (LLP) is reservation of name of LLP.

ii) Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.

b) Incorporate LLP

i) After reserving a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership (LLP).

ii) e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners.

c) LLP Agreement

i) Execution of LLP Agreement is mandatory as per Section 23 of the Act.

ii) LLP Agreement is required to be filed with the registrar in e- Form 3 within 30 days of incorporation of LLP.

Theoretical Questions (Companies Act)

1) *What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital.*

Answer:-

Company limited by guarantee: Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

Similarities and dis-similarities between the Guarantee Company and the Company having share capital:

The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited.

However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

2) *Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?*

Answer :-

Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to Promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

Such company intends to apply its profit in

a) promoting its objects and
b) Prohibiting the payment of any dividend to its members.

The Central Government has the power to issue license for registering a section 8 company.

a) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing license on such conditions as it deems fit.
b) The registrar shall on application register such person or association of persons as a company under this section.
c) On registration the company shall enjoy same privileges and obligations as of a limited company.

3) ***Briefly explain the doctrine of "ultra vires" under the Companies Act, 2013. What are the consequences of ultra vires acts of the company?***

Answer:-

Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultra vires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers are in their nature limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further **[Ashbury Railway Company Ltd. vs. Riche]**. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

For example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

An act which is ultra vires the company being void cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

4) ***Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.***

Answer:-

Doctrine of Indoor Management (the Companies Act, 2013): According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to

examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of **Royal British Bank v. Turquand**. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

a) **Actual or constructive knowledge of irregularity:** The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

In **Howard vs. Patent Ivory Manufacturing Co.** where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Likewise, in **Morris v Kansseen**, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

The protection of the "Turquand Rule" is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, Which is apparently outside the scope of his authority. Where, for example, as in the case of Anand bihari Lal vs. Dishaw & Co. the plaintiff accepted a transfer of a company's property from its accountant, the transfer was held void.

The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company's property.

Similarly, in the case of **Haughton & Co. v. Nothard, Lowe & Wills Ltd.** where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual" that the

plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it." Any other rule would "place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf."

c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.

Forgery may in circumstances exclude the 'Turquand Rule'. The only clear illustration is found in the Ruben v Great Fingall Consolidated. In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant's company. The company's

secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate.

The plaintiff contended that whether the signature were genuine or forged was a part of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.