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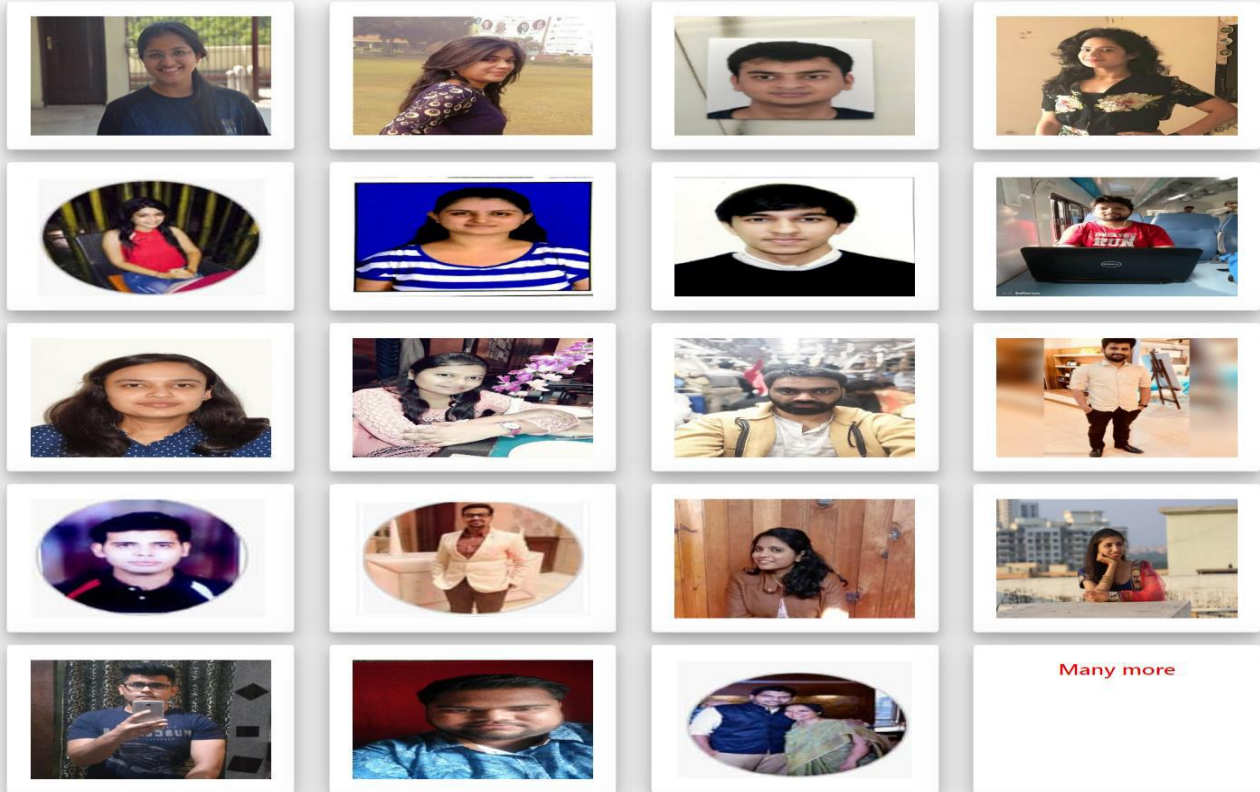
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Final Examination Results, 2017

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## Business laws

### 100 important questions

**Q-1:** When a company is registered, it is clothed with a legal personality. Explain.

**Ans:-** When a company is registered, it is clothed with a legal personality. It comes to have almost the same rights and powers as a human being. Its existence is distinct and separate from that of its members. A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.

a) It is at law, a person different altogether from the subscribers to the memorandum of association. Its personality is distinct and separate from the personality of those who compose it.

b) Even members can contract with company, acquire right against it or incur liability to it. For the debts of the company, only its creditors can sue it and not its members.

A company is capable of owning, enjoying and disposing of property in its own name. Although the capital and assets are contributed by, the shareholders, the company become the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property.

**Q-2:** Examine the following whether they are correct or incorrect along with reasons:

- i. A company being an artificial person cannot own property and cannot sue or be sued.
- ii. A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

**Ans:- (i) The statement is incorrect:** A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

**(ii)The statement is correct:** Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

**Q-3:** Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company?

**Ans:-** Section 2(62) defines an OPC as a company which has only one person as a member.

**Rules regarding its membership:**

- a. Only one person as member.
- b. The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- c. The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.



d. Such other person may be given the right to withdraw his consent.

e. The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.

f. Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

g. Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year).

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

h. No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.

i. No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

An OPC may be converted into a private or a public company after two years from the date of incorporation. However it can never convert into a section 8 company. If the paid up share capital of an OPC fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees such OPC must convert into a private or a public company.

**Q-4:** Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

i. Directors and their relatives 190

ii. Employees 15

iii. Ex-Employees (Shares were allotted when they were employees 10

iv. 5 couples holding shares jointly in the name of husband and wife (5\*2) 10

v. Others 5

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

**Ans:-** According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that –

A. persons who are in the employment of the company; and

B. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased shall not be included in the number of members.

Further a public company may be converted into a private company if the number of members do not exceed 200 or is reduced to 200.

In the instant case, Flora Fauna Limited may be converted into a private company only if the total members of the company are limited to 200. The total number of members of the company is

(i)	Directors and their relatives	190
(ii)	Couples (5 * 1)	5

(iii)	others	5
	Total	200

Therefore, the company can convert into a private company without reducing the total number of members. There is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

**Q-5:** Briefly explain the doctrine of "ultra vires" under the Companies Act, 2013. What are the consequences of ultra vires acts of the company?

**Ans:-** The term ultra vires means "beyond the powers". The rule of ultra vires is applicable to acts done in excess of the legal powers of the doers.

The fundamental rule of Company Law is 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. 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. 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 authorized to carry on.

In the case of **Ashbury Railway Carriage and Iron Company V. Richie** the company was incorporated with the objects of:

- To make, sell or lend on hire railway carriages and wagons
- To carry on the work of mechanical engineers and general contractors.
- To purchase, lease, sell and work mines.
- To purchase and sell as merchants or agents, coal, timber, metals, etc.

The directors of the company contracted with Richie for financing the construction of railway line in Belgium. The company ratified the act of the directors by passing a special resolution. Later the company canceled the contract. Richie sued the company. The court held that the contract was void. The term general contractors was to be interpreted to mean work associated with mechanical engineers.

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. 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 regularized by ratifying it subsequently.

**Q-6:** ABC Pvt. Ltd., is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?

**Ans:-** Death of all members of a Private Limited Company, Under the Companies Act, 2013:

The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get



the shares registered in their names by way of the process which is called “transmission of shares”. The company will cease to exist only when it is wound up by a due process of law.

Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

**Q-7:** The Articles of Association of XYZ Ltd. provides that Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in direct need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013.

**Ans:-** According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. As per the case of the Royal British Bank vs. Turquand [1856] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Since, the given question is based on the above facts, accordingly here in this case Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.

**Q-8:** Krishna, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to Krishna as a pretended loan. This way, Krishna divided his income into three parts in a

bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.

**Ans:-** The House of Lords in Salomon Vs. Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts.

When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.

The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. Krishna was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans.

**Q-9:** Ravi Private Limited has borrowed ` 5 crores from Mudra Finance Ltd. This debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.?

**Ans:-** As per the facts given, Ravi Private Limited borrowed ` 5 crore from Mudra Finance Ltd. This debt is ultra vires to the company, which signifies that Ravi Private Limited has borrowed

the amount beyond the expressed limit prescribed in its memorandum. This act of the company can be said to be null and void.

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.

So is being the act void in nature, there being no existence of the contract between the Ravi Private Ltd. and Mudra Finance Ltd. Therefore, the company Ravi Private Ltd. is liable to pay this debt amount upto the limit prescribed in the memorandum.

Remedy available to the Mudra Finance Ltd.: 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, a company which deals with the other, is deemed to know about the powers of the company.

So, Mudra Finance Ltd. can claim for the amount within the expressed limit prescribed in its memorandum.

**Q-10:** Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.

**Ans:-** According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary”, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for

all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Y) any title to the shares. Similarly any transfer made by Y (to Z) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the company is bound to restore the name of X as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North Staffordshire Railway Co. 38 Ch D 456).

In the above case, 'therefore, X has the right against the company to get the shares recorded in his name. However, neither Y nor Z' have any rights against the company even though they are bona fide purchasers.

However, since X seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Y and Z.

**Q-11:** State the limitations of the doctrine of indoor management under the Companies Act, 2013.

**Ans:-** According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. Held in the case of Royal British Bank V. Turquand. However this rule is subject to certain limitation that is it is inapplicable in the following cases:

i. 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.

ii. 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.

iii. 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.

**Q-12:** What is corporate veil and state the circumstances when this veil will be lifted.

**Ans:- Meaning of Corporate veil:** The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors.

**Case-law: The case of Salomon v. Salomon and Co. Ltd.**

- Once a company has been validly constituted under the Companies Act, it becomes a legal person distinct from its members and for this purpose it is immaterial whether any member holds a large or small proportion of the shares, and whether he holds those shares as beneficially or as a mere

- Lifting of Corporate Veil:

i. To determine the character of the company i.e. to find out whether co-enemy or friend: Daimler co. Ltd v/s Continental tyre & Rubber co. Ltd.: It was held that a company will be regarded as having enemy character if the persons having de facto control of company are residents of enemy country or wherever they may be they are acting on instructions of enemy.

ii. To protect revenue/tax: Re. Dinshaw Manekjee Petit : The assessee was receiving Huge dividend and interest income and he created three companies to reinvest the income for reducing the tax burden, the companies were having no business other than receiving



investment and giving back to assessee as a pretended loan. It was held that company was not more than the assessee himself and the assessee was held liable to pay the tax.

iii. To avoid a legal obligation: Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another).

iv. Formation of subsidiaries to act as agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

v. Company formed for fraud/improper conduct or to defeat law: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

**Q-13:** Describe about Section 8 company.

**Ans:- Meaning:** When a person or an AOP wants to be registered as a limited company and it

i. Has in its objects the promotion of Commerce, Arts, Sports, Education, Research, Social welfare, Religion, Charity, Protection of Environment or any such other object.

ii. Intends to apply its profit or other income on promoting its objectives

iii. Intends to prohibit the payment of any dividend to its members.

**Characteristics, advantages and disadvantages:**

- The Central Government may permit such registration as a limited company under this section. (Section.8) without addition of words “Limited” and “Private Limited”.
- A firm can be a member of such company.
- The MOA and AOA of this company cannot be altered without government’s prior approval.
- Central Government can also revoke the license so granted after giving an opportunity of being heard to the company.
- Government can also pass order of winding up of such company.
- Government can also pass order for amalgamation of such company.

**Q-14:** The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply.

**Ans:- Doctrine of Indoor Management:** According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

## **Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)**

**i. Knowledge of irregularity:** In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

**ii. Negligence:** If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

**iii. Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

**Q-15:** Describe about Incorporation Process of company.

**Ans:-** Section 7 of the Companies Act, 2013 provides for the procedure to be followed for incorporation of a company.

### **1. Filing of the documents and information with the registrar**

For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the company is proposed to be situated-

- the memorandum and articles of the company duly signed by all the subscribers to the memorandum.

- a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company)
- a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that-
  - i. he is not convicted of any offence in connection with the promotion, formation or management of any company, or
  - ii. he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
  - iii. and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- the address for correspondence till its registered office is established
- the particulars of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.
- the particulars of the persons mentioned in the articles as the subscribers to the Memorandum, Director Identification Number and such other particulars including proof of identity as may be prescribed;
  - i. the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

## **2. Issue of certificate of incorporation on registration**

The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

**3. Allotment of Corporate Identity Number (CIN):** On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

**4. Maintenance of copies of all documents and information:** The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.

**5. Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. at the time of Incorporation):** If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

**6. Company already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact (i.e. post Incorporation):**

Where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action,

- the promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.
- the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,-
  - pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
  - direct that liability of the members shall be unlimited; or
  - direct removal of the name of the company from the register of companies; or



- pass an order for the winding up of the company; or
- pass such other orders as it may deem fit:

Provided that before making any order,-

- the company shall be given a reasonable opportunity of being heard in the matter; and
- the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

**Q-16:** 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

**Ans:- Provision: [The Sale of Goods Act, 1930]**

1. 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.
2. 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.
3. 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 part 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.
4. 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.

**Q-17:** What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930? State also the implied warranties operative under the said Act

**Ans:- Provision: [The Sale of Goods Act, 1930]**

1. 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 merchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].

2. Implied Warrants under The Sale of Goods Act, 1930 are as follows:

**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 disturbed 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.

**Q-18:** 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.

**Ans:- 1. Difference between Condition and Warranty**

**a)** A condition is a stipulation essential to the main purpose of the contract whereas a 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.

**2.** 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 due to impossibility or otherwise.

**Q-19:** Referring to the provisions of the Sale of Goods Act, 1930, state the circumstances under which when goods are delivered to the buyer “on approval” or “on sale or return” or other similar terms, the property therein passes to the buyer.

Ms. Preeti owned a motor car, which she handed over to Mr. Joshi on sale or return basis. After a week, Mr. Joshi pledged the motor car to Mr. Ganesh. Ms. Preeti now claims back the motor car from Mr. Ganesh. Will she succeed? Referring to the provisions of the Sale of Goods Act, 1930 decide and examine what recourse is available to Ms. Preeti.

**Ans:-** As per the provisions of section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer-

a) when the buyer signifies his approval or acceptance to the seller or does any other act adopting the transaction

b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time or

c) He does something to the good, which is equivalent to accepting the goods, e.g. he pledges or sells the goods.

**Facts of Case:**

Since, Mr. Joshi, who had taken delivery of the Motor car on Sale or Return basis and pledged the motor car to Mr. Ganesh, has attracted the third condition that he has done something to the good which is equivalent to accepting the goods e.g. he pledges or sells the goods. Therefore, the property therein (Motor car) passes to Mr. Joshi.

**Ans:-** Now in this situation, Ms. Preeti cannot claim back her Motor Car from Mr. Ganesh, but she can claim the price of the motor car from Mr. Joshi only.

**Q-20:** 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".

**Ans:-** 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:

1. 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:

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

2. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

3. 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.

4. According to Section 49 the unpaid seller loses his lien on goods:



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

c) by waiver thereof.

5. 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.

**6. 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 a 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 the starting point of the right of stoppage the goods in transit.

**Q-21:** Explain the “condition as to Merchantability” and “condition as to wholesomeness” under the Sale of Goods Act, 1930.

**Ans:- 1.** Condition as to Merchantability [Section 16(2) of the Sale of Goods Act, 1930]: Where 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 shall be of merchantable quality.

**2.** Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

**3.** The expression “merchantable quality”, though not defined, nevertheless connotes goods of such a quality and in such a condition a man of ordinary prudence would accept them as goods of that description. It does not imply any legal right or legal title to sell.

**Example:** If a person orders motor horns from a manufacturer of horns, and the horns supplied are scratched and damaged owing to bad packing, he is entitled to reject them as un-merchantable.

**4.** Condition as to wholesomeness: In the case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

**Example:** A supplied F with milk. The milk contained typhoid germs. F’s wife consumed the milk and was infected and died. Held, there was a breach of condition as to fitness and A was liable to pay damages.

**Q-22:** Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent?

**1.** Section 26 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, the goods remain at the seller’s risk until the property therein is transferred to the buyer, but when the

property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not.

2. Further Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer, unless and until the goods are ascertained and where there is contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer.

3. Such assent may be express or implied. Applying the aforesaid law to the facts of the case in hand, it is clear that Mr. Samuel has the right to select the good out of the bulk and he has sent his men for same purpose.

**Facts of Case:**

1. Mr. Samuel agreed to purchase 100 bales from Mr. Varun and sent his men to take delivery of the same. Mr. Varun were able to pack only 60 bales.

2. Later on, there was accidental fire in Varun's place, due to which all the stock including those 60 bales to be delivered to Mr. Samuel was destroyed.

**Ans:-** Hence the problem can be answered based on the following two assumptions and the answer will vary accordingly.

a) Where the bales have been selected with the consent of the buyer's representatives: In this case, the property in the 60 bales has been transferred to the buyer and goods have been appropriated to the contract. Thus, loss arising due to fire in case of 60 bales would be borne by Mr. Samuel. As regards 40 bales, the loss would be borne by Mr. Varun, since the goods have not been identified and appropriated.

**b)** Where the bales have not been selected with the consent of buyer's representatives. In this case the property in the goods has not been transferred at all and hence the loss of 100 bales would be borne by Mr. Varun completely.

**Q-23:** Classify the following transactions according to the types of goods they are:

**a)** A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside.

**b)** A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop.

**c)** T agrees to sell to S all the oranges which will be produced in his garden this year.

**Ans:- a)** A wholesaler of cotton has 100 bales in his godown. He agrees to sell 50 bales and these bales were selected and set aside. On selection the goods becomes ascertained. In this case, the contract is for the sale of ascertained goods, as the cotton bales to be sold are identified and agreed after the formation of the contract.

**b)** If A agrees to sell to B one packet of salt out of the lot of one hundred packets lying in his shop, it is a sale of unascertained goods because it is not known which packet is to be delivered.

**c)** T agrees to sell to S all the oranges, which will be produced in his garden this year. It is contract of sale of future goods, amounting to 'an agreement to sell

**Q-24:** Mr. G sold some goods to Mr. H for certain price by issue of an invoice, but payment in respect of the same was not received on that day. The goods were packed and lying in the godown of Mr. G. The goods were inspected by H's agent and were found to be in order. Later on, the dues of the goods were settled in cash. Just after receiving cash, Mr. G asked Mr. H that goods should be taken away from his godown to enable him to store other goods purchased by

him. After one day, since Mr. H did not take delivery of the goods, Mr. G kept the goods out of the godown in an open space. Due to rain, some goods were damaged.

Referring to the provisions of the Sale of Goods Act, 1930, analyse the above situation and decide who will be held responsible for the above damage. Will your answer be different, if the dues were not settled in cash and are still pending?

**Ans 1.** According to section 44 of the Sales of Goods Act, 1932, when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

**2.** The property in the goods or beneficial right in the goods passes to the buyer at appoint of time depending upon ascertainment, appropriation and delivery of goods.

**3.** Risk of loss of goods prima facie follows the passing of property in goods. Goods remain at the seller's risk unless the property there in is transferred to the buyer, but after transfer of property therein to the buyer the goods are at the buyer's risk whether delivery has been made or not.

**Facts of case:**

In given question Mr. G sold some goods to Mr. H but payment of the same was not received that day. Goods were packed & lying in godown of Mr. G. agent of Mr. H inspected the goods and later on payment was made in cash. Just after receiving cash. Mr. G asked Mr. H to take away goods so he can store his other goods at such place but Mr. H did not take delivery. Mr. G kept the goods out of the godown in an open place and due to rain some of the goods were damaged.

**Conclsiion 1.** In the given case, since Mr. G has already intimated Mr. H, that he wanted to store some other goods and thus Mr. H should take the delivery of goods kept in the godown of Mr. G, the loss of goods damaged should be borne by Mr. H.

2. If the price of the goods would not have settled in cash and some amount would have been pending then Mr. G will be treated as an unpaid seller and he can enforce the following rights against the goods as well as against the buyer personally:

a) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. [Section 55(1) of the Sales of Goods Act, 1930]

b) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract. [Section 55(2) of the Sales of Goods Act, 1930].

**Q-25:** M/s Woodworth & Associates, a firm dealing with the wholesale and retail buying and selling of various kinds of wooden logs, customized as per the requirement of the customers. They dealt with Rose wood, Mango wood, Teak wood, Burma wood etc.

Mr. Das, a customer came to the shop and asked for wooden logs measuring 4 inches broad and 8 feet long as required by the carpenter. Mr. Das specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames. The Shop owner agreed and arranged the wooden pieces cut into as per the buyers requirements.

The carpenter visited Mr. Das's house next day, and he found that the seller has supplied Mango Tree wood which would most unsuitable for the purpose. The carpenter asked Mr. Das to return the wooden logs as it would not meet his requirements.

The Shop owner refused to return the wooden logs on the plea that logs were cut to specific requirements of Mr. Das and hence could not be resold.



(i) Explain the duty of the buyer as well as the seller according to the doctrine of “Caveat Emptor”.

(ii) Whether Mr. Das would be able to get the money back or the right kind of wood as required serving his purpose?

**Ans 1. Duty of the buyer according to the doctrine of “Caveat Emptor”:** In case of sale of goods, the doctrine ‘Caveat Emptor’ means ‘let the buyer beware’. When sellers display their goods in the open market, it is for the buyers to make a proper selection or choice of the goods. If the goods turn out to be defective he cannot hold the seller liable. The seller is in no way responsible for the bad selection of the buyer. The seller is not bound to disclose the defects in the goods which he is selling.

**2. Duty of the seller according to the doctrine of “Caveat Emptor”:** The following exceptions to the Caveat Emptor are the duties of the seller:

- a) Fitness as to quality or use
- b) Goods purchased under patent or brand name
- c) Goods sold by description
- d) Goods of Merchantable Quality
- e) Sale by sample
- f) Goods by sample as well as description
- g) Trade usage
- h) Seller actively conceals a defect or is guilty of fraud

As Mr. Das has specifically mentioned that he required the wood which would be best suited for the purpose of making wooden doors and window frames but the seller supplied Mango tree wood which is most unsuitable for the purpose. Mr. Das is entitled to get the money back

or the right kind of wood as required serving his purpose. It is the duty of the seller to supply such goods as are reasonably fit for the purpose mentioned by buyer. [Section 16(1) of the Sale of Goods Act, 1930]

**Q-26:** What do you understand by Caveat Emptor under the Sale of Goods Act 1930? What are the exceptions to this rule?

**Ans:-** 1. 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.

2. 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 any body excepting himself.

3. 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"

4. 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 know 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 quality 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.

**Q-27:** 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.

**Ans:-** 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:

**1. 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

**a)** if he was in possession of the goods or documents with the consent of the owner

**b)** if the sale was made by him when acting in the ordinary course of business as a mercantile agent and

**c)** 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).

**2. 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 the seller has no authority to sell. (Section 28)

**3. 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).

**4. Sale by one who has already sold the goods but continues in possession thereof:** 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 disposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)]

**5. 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)].

**6. 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)].

**7. Sale under the provisions of other Acts:**

a) Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.

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

c) Sale by a pawnee under default of pawnor will give valid title to the purchaser.

**Q-28:** State the differences between Partnership and Hindu Undivided Family.

**Ans:-**

<b>Partnership</b>	<b>Hindu Undivided Family</b>
Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
Death of a partner ordinarily leads to the dissolution of partnership.	The death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the Karta, the governing male or female member of the family.
Every partner can, by his act, bind the firm.	The Karta or the manager has the authority to contract for the family business and the other members in the family.
In a partnership, the liability of a partner is unlimited.	In a Hindu undivided family, only the liability of the Karta is unlimited, and the other copartners are liable only to the extent of their share in the profits of the family business.
A partner can bring a suit against the firm for accounts, provided he also seeks the	On the separation of the joint family, a member is not entitled to ask for account of

dissolution of the firm.	the family business.
A partnership is governed by the Indian Partnership Act, 1932.	A Joint Hindu Family business is governed by the Hindu Law.
In a partnership, a minor cannot become a partner, though he can be admitted to the benefits of partnership, only with the consent of all the partners.	In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth. He does not have to wait for attaining majority.
A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu family has the continuity till it is divided. The status of Joint Hindu family is not thereby affected by the death of a member.
In case of Partnership number of members should not exceed 50	Members of HUF who carry on a business may be unlimited in number.

**Q-29:** What is the conclusive evidence of partnership? State the circumstances when partnership is not considered between two or more parties.

**Ans:-** The cardinal principle of partner, mutual agency is the conclusive evidence of partner. Existence of this principle helps to decide whether two or more persons are partners or not. 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 element of mutual agency relationship exists between the parties constituting a group formed with a view to earn profits by running a business, a partnership is deemed to exist.

**Circumstances when partnership is not considered between two or more parties:**

Various judicial pronouncements have laid to the following factors leading to no partnership between the parties:

- i. Parties have not retained any record of terms and conditions of partnership.



ii. Partnership business has maintained no accounts of its own, which would be open to inspection by both parties.

iii. No account of the partnership was opened with any bank

iv. No written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership.

**Q-30:** "Business carried on by all or any of them acting for all." Discuss the statement under the Indian Partnership Act, 1932.

**Ans:-** The business must be carried on by all the partners or by anyone or more of the partners acting for all. In other words, there should be a binding contract of mutual agency between the partners. An act of one partner in the course of the business of the firm is in fact an act of all partners. Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners. The true test of partnership is mutual agency. If the element of mutual agency is absent, then there will be no partnership.

In KD Kamath & Co., the Supreme Court has held that the two essential conditions to be satisfied are that:

i. there should be an agreement to share the profits as well as the losses of business; and

ii. the business must be carried on by all or any of them acting for all, within the meaning of the definition of 'partnership' under section 4. The fact that the exclusive power and control, by agreement of the parties, is vested in one partner or the further circumstance that only one partner can operate the bank accounts or borrow on behalf of the firm are not destructive of the theory of partnership provided the two essential conditions, mentioned earlier, are satisfied.

**Q-31:** Who is a nominal partner under the Indian Partnership Act, 1932? What are his liabilities?

**Ans:-** A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.

**Liabilities:** He is not entitled to share the profits of the firm, neither he invests in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

**Q-32:** State the legal position of a minor partner after attaining majority:

- i. When he opts to become a partner of the same firm.
- ii. When he decide not to become a partner.

**Ans:-** A minor cannot become a partner of the firm however he can be admitted to the benefits of the firm. On attaining majority the minor shall within 6 months from the day he attains majority or the day he comes to know he was a beneficiary whichever is later he must give a notice to the registrar and a public notice of whether he wants to become a partner or not. If he fails to give notice he shall automatically become the partner of the firm.

i. If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30 of the Indian Partnership Act, 1932, are as follows:

- a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
- b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

ii. When the minor elects not to become a partner:

a) His rights and liabilities continue to be those of a minor up to the date of giving public notice.

b) His share shall not be liable for any acts of the firm done after the date of the notice.

c) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

**Q-33:** Master X was introduced to the benefits of partnership of M/s ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed and he failed to give a public notice as to whether he elected to become or not to become a partner in the firm. Later on, Mr. L, a supplier of material to M/s ABC & Co., filed a suit against M/s ABC & Co. for recovery of the debt due. In the light of the Indian Partnership Act, 1932, explain:

i. To what extent X will be liable if he failed to give public notice after attaining majority?

ii. Can Mr. L recover his debt from X?

**Ans:-** As per the provisions of Section 30 of the Indian Partnership Act, 1932, a minor can be admitted to the benefits of the firm. At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm. If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

If the minor becomes a partner by his failure to give the public notice within specified time, his rights and liabilities as given in Section 30(7) are as follows:

a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.

b) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

In the above case X was introduced to the benefits of partnership of M/s ABC & Co. After attaining majority he failed to give notice. Since X has failed to give a public notice, he shall become a partner in the firm. Mr. L, a supplier filed a case against the firm for recovery of debt.

Thus

i. X will be personally liable to Mr. L.

ii. Mr. L can recover his debt from X in the same way as he can recover from any other partner.

**Q-34:** A, B and C are partners of a partnership firm ABC & Co. The firm is a dealer in office furniture. A was in charge of purchase and sale, B was in charge of maintenance of accounts of the firm and C was in charge of handling all legal matters. Recently through an agreement among them, it was decided that A will be in charge of maintenance of accounts and B will be in charge of purchase and sale. Being ignorant about such agreement, M, a supplier supplied some furniture to A, who ultimately sold them to a third party. Referring to the provisions of the Partnership Act, 1932, advise whether M can recover money from the firm.

What will be your advice in case M was having knowledge about the agreement?

**Ans:-** According to Section 20 of the Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict implied authority of any partners. Any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

The implied authority of a partner may be extended or restricted by contract between the partners. Under the following conditions, the restrictions imposed on the implied authority of a partner by agreement shall be effective against a third party:

1. The third party knows about the restrictions, and
2. The third party does not know that he is dealing with a partner in a firm.

In the above case A, B and C are partners of the firm which deals in office furniture. A was in charge of purchase and sale, B in charge of maintenance and C in charge of handling legal matters. They agreed that henceforth A will be in charge of maintenance and B would be in charge of sales and purchase. M a supplier of furniture who was not aware of this agreement supplied some furniture to A who sold it to a third party. As M was not aware of the change in authority he shall not be bound by such agreement.

Thus M can recover the money from the firm.

On the other hand if M was aware of the change in the authority of the partners he shall also be bound by the terms of the agreement and cannot recover the money from the firm.

**Q-35:** Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.

**Ans:-** As per section 27 of Indian Partnership Act, 1932, 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.

Clause (a) covers the case where a partner acts within his authority and due to his authority as a 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.

**Q-36:** 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?

**Ans:-** Section 29 of the Indian Partnership Act, 1932 provides that a share in a partnership is transferable like any other property. Such transfer may take place either by way of sale, pledge or mortgage. By virtue of Section 31, a person cannot be introduced as a partner in a firm without the consent of all the partners. A partner is not debarred from transferring his interest but for such transfer he must get the consent of all the other partners.

However as the partnership relationship is based on mutual confidence, the assignee of a partner's interest cannot enjoy the same rights and privileges as the original partner.

The rights of such transferee are as follows:

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



2. 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.

**Q-37:** 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.

**Ans:-** As per section 25 of the Indian Partnership Act, 1932, 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. The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority. This is because that all the acts done within the scope of authority are the acts done towards the business of the firm. The expression 'act of firm' connotes any act or omission by all the partners or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm. In order to bring a case under Section 25, it is necessary that the act of the firm, in respect of which liability is brought to be enforced against a party, must have been done while he was a partner.

As per sections 26 & 27 of the Indian Partnership Act, 1932, 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 thereof to the same extent as the partner. A partner acting within his apparent authority receives money or property from a third party and misapplies it, or 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.

**Q-38:** Comment on 'the right to expel partner must be exercised in good faith' under the Indian Partnership Act, 1932.

**Ans:-** A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

- i. the power of expulsion must have existed in a contract between the partners;
- ii. the power has been exercised by a majority of the partners; and
- iii. it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bona fide interest of the business of the firm.

**Q-39:** 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.

**Ans:-** As per the provisions of the Indian Partnership Act, 1932, a partner when retiring from the firm must give a public notice of his retirement. If notice of retirement is not given then the partner shall be liable for the acts of the firm even after his retirement. However if the

existence of a partner was not known then even if he retires without giving any public notice he shall not be liable for the subsequent acts of the firm.

In the above case M, N and P are the partners of the firm. Partner P retired from the firm but failed to give notice of retirement. After retirement P visited a fair along with the other partners and the firm gave their card to a dealer in which P's name was also printed. The dealer sold some refrigerators to the firm and could not recover the dues. X wants to sue P also. As P was a partner whose existence was known to the third parties and he retired without giving any public notice he shall also be liable.

Thus P is also liable to X for the refrigerators sold.

**Q-40:** Referring to the Provisions of the Indian Partnership Act, 1932, answer the following:

- i. What are the consequences of Non-Registration of Partnership firm?
- ii. What are the rights which won't be affected by Non-Registration of Partnership firm?

**Ans:- Consequences of Non-registration of partnership firm:** Under Section 69 of the Indian Partnership Act, 1932 non-registration of partnership gives rise to a number of disabilities. Though registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration.

Following are the consequences of non-registration:

- a) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm.
- b) No relief to partners for set-off 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-off, 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.

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.

Non-registration of a firm does not, however, affect the following rights:

a) The right of third parties to sue the firm or any partner.

b) The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.

c) The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.

d) The right to sue or claim a set-off if the value of suit does not exceed 100 in value.

**Q-41:** State the grounds on which a firm may be dissolved by the Court under the Indian Partnership Act, 1932?

**Ans:-** U/s 44 of the Partnership Act, 1932 court may, at the suit of the partner, dissolve a firm on any of the following ground:

**1. Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

**2. Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.

**3. Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

**4. Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or conducts himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:

- i. Embezzlement,
- ii. Keeping erroneous accounts
- iii. Holding more cash than allowed
- iv. Refusal to show accounts despite repeated request etc.

**5. Transfer of interest:** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.

**6. Continuous/Perpetual losses:** Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

**7. Just and equitable grounds:** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-

- i. Deadlock in the management.
- ii. Where the partners are not in talking terms between them.
- iii. Loss of substratum.
- iv. Gambling by a partner on a stock exchange.

**Q-42:** Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932.

**Ans:-** Subject to a contract between the partners while settling the accounts of a firm after dissolution, the following rules shall be observed:

- i. Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
- ii. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
  - a) in paying the debts of the firm to third parties;
  - b) in paying to each partner rateably what is due to him from capital;
  - c) in paying to each partner rateably what is due to him on account of capital; and
  - d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.



**Q-43:** What do you mean by Limited Liability Partnership (LLP)? What are the advantages for forming a LLP for doing business?

**Ans:-** LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising 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.

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

**Advantages of LLP form:**

1. LLP is organized and operates on the basis of an agreement
2. It provides flexibility without imposing detailed legal and procedural requirements
3. It enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient Manner.
4. It is easy to form
5. In LLP form, all partners enjoy limited-liability
6. Flexible capital structure is there in this form
7. It is easy to dissolve

**Q-44:** List the differences between the Limited Liability Partnership and the Limited Liability Company.

Ans:-

	Basis	LLP	LLC
1.	<b>Regulating Act</b>	The LLP Act, 2008.	The Company Act, 2013.
2.	<b>Members/ Partners</b>	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	<b>Internal governance structure</b>	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act. 2013).
4.	<b>Name</b>	Name of the LLP to contain the word "Limited Liability Partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Private company to contain the word "Private limited" as suffix.
5.	<b>Number of members/ partners</b>	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum - 2 members Maximum - 200 members Public company: Minimum - 7 members Maximum - No such limit on the members. Members can be organizations, trusts, another business form or individuals.
6.	<b>Liability of members/ partners</b>	Liability of a partners is limited to the extent of agreed Contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.

7.	<b>Management</b>	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	<b>Minimum number of directors/ designated partners</b>	Minimum 2 designated partners.	Private Co. - 2 directors Public Co. - 3 directors

**Q-45:** LLP is an alternative corporate business fork' that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

**Ans:-** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the 'LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

**Flexibility of a partnership:** The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs professionals and enterprises providing services of any kind or engaged in' scientific and technical disciplines, to form commercially efficient Vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

**Q-46:** What do you mean by Designated Partner? Whether it is mandatory to appoint designated partner in a LLP?

**Ans:-** According to section 7:

i. Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

ii. If in. LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

iii. Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.

**Q-47:** What is the procedure for changing the name of Limited Liability Partnership (LLP) on the order of the Central Government under the LLP Act, 2008?

**Ans:-** As per section 17 of LLP Act, 2008 where the Central Government is satisfied that a LLP has been registered under a name which —

i. Is undesirable; or .

ii. is identical with or too nearly resembles the name .of any other LLP or body Corporate or a registered trademark Or other name. as to-be likely to be mistaken for it,

the Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow.

Any LLP which fails to comply with a direction shall be punishable with fine which shall not be less than 10,000 but which may extend to 5 Lakhs. The designated partner of such LLP shall be punishable with fine which shall not be less than 10,000 but which may extend to 1 lakh.

**Q-48:** Examine the concept of LLP.

**Ans:-** 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"**

- \* 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.
- \* 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.
- \* 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.
- \* Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.
- \* LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

\* Since LLP contains elements both a 'corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

**Q-49:** Point out with reason whether the following agreements are valid or void:

**a)** Kamala promises Ramesh to lend 500,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.

**b)** Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.

**c)** Ram sells the goodwill of his shop to Shyam for 4,00,000 and promises not to carry on such business forever and anywhere in India.

**d)** In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceedings against each other without consent.

**e)** Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.

**Ans:- a)** The agreement is void. As per Section 23 of the Indian Contract Act, 1872, an agreement is void if the object or consideration is against the public policy.

**b)** The agreement is void. As per Section 20 of the Indian Contract Act, 1872 the contracts caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.

**c)** The agreement is void. As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business. In the above case the condition is not reasonable.



d) The agreement is void. An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act. 1872.

e) The agreement is valid. An agreement with alien friend is valid, but an agreement with alien enemy is void.

**Q-50:** State the Difference between Void and Voidable Contract?

**Ans:-**

<b>Basis</b>	<b>Void Contract</b>	<b>Voidable Contract</b>
<b>Meaning</b>	A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
<b>Cause</b>	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
<b>Performance of contract</b>	A void contract cannot be performed	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
<b>Rights</b>	A void contract does not grant any right to any party.	The party whose consent was not free has the right to rescind the contract.

**Q-51:** State the Difference between Void and Illegal Agreement?

**Ans:-**

Basis of difference	Void agreement	Illegal agreement
<b>Scope</b>	A void agreement is not necessarily illegal.	An illegal agreement is always void.
<b>Nature</b>	Not forbidden under law.	Are forbidden under law.
<b>Punishment</b>	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment.
<b>Collateral Agreement</b>	It's not necessary that agreements collateral to void agreements may also be void. It may be valid also.	Agreements collateral to illegal agreements are always void.

**Q-52:** Define offer. Explain the essentials of a valid offer. How an offer is different from an invitation to offer?

**Ans:-** Offer as defined under Section 2(a) of the Indian Contract Act, 1872 "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal".

The following are essentials of an offer: -

- (i) Must be capable of creating legal relation.
- (ii) Must be certain, definite and not vague.
- (iii) Must be communicated.
- (iv) Must be made with a view to obtaining the assent of the other party
- (v) May be conditional

(vi) Offer should not contain a term the non compliance of which would amount to acceptance

(vii) May be general or specific

(viii) May be expressed or implied

(ix) A statement of price is not an offer

**Offer and an Invitation to an offer:**

1. Offer means final expression of willingness by the offer or to be bound by the offer should the other party chooses to accept it. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer.

2. Offer is made with the object of getting the consent of the offeree whereas invitation to offer is made with an intention to get the offer from the other person.

3. An offer can be accepted by the offeree. An invitation to offer cannot be accepted by the person to whom it is made.

4. Offer when accepted becomes an agreement. Invitation to offer cannot be accepted at all.

**Q-53:** Comment on the following statements:

a) Acceptance must be absolute and unqualified.

b) Acceptance must be in the prescribed mode.

**Ans:- a) Acceptance must be absolute and unqualified:** As per section 7 of the Indian Contract Act, 1872 acceptance is valid only when it is absolute and unqualified and is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, then it must be accepted accordingly.

**Example:** 'A' enquires from 'B', "Will you purchase thy car for 2 lakhs?" If 'B' replies "I shall purchase your car for 2 lakhs, if you buy my motorcycle for 50000/ here 'B' cannot be considered to have accepted the proposal. If on the other hand 'B' agrees to purchase the car from 'A' as per his proposal subject to availability of valid Registration Certificate / book for the car, then the acceptance is in place though the offer contained no mention of R.C. book. This is because expecting a valid title for the car is not a condition. Therefore, the acceptance in this case is unconditional.

**b)** Acceptance must be in the prescribed mode: Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner Prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, the proposer is presumed to have consented to the acceptance. Example: If the offer or prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offer or informs the offeree that the acceptance is not according to the mode prescribed. But if the offer or fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

**Q-54:** "To form a valid contract, consideration must be adequate". Comment.

**Ans:-** 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. Modden**).

Consideration must however, be something to which the law attaches value though it need not be equivalent in value to the promise made.

An agreement to 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.

**Q-55:** A stranger to a contract; cannot sue, however in some cases even a stranger to contract may enforce a claim. Explain.

**Ans:-** Doctrine of privity of contract states that only the party to the contract can sue and be sued, third party cannot sue. If a contract is entered between two parties which is later breached the other party to the contract has a right to enforce this contract that is sue the other party but a third party cannot enforce the same contract.

This rule is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

1. In the case of **trust**, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
2. In the case of a **family settlement**, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
3. In the case of certain **marriage contracts**, or arrangements, a provision may be made for the benefit of a person. The person may enforce the agreement though he is not a party to the agreement.
4. In the case of **assignment of a contract**, when the benefit under a contract has been assigned, the assignee can enforce the contract.
5. **Acknowledgement or estoppel** - where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.

6. In the case of **covenant running with the land**, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

7. **Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

**Q-56:** "No consideration, no contract" Comment.

**Ans:- 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. No consideration, no contract is a general rule. However, Section 25 of the Indian Contract Act, 1872 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, Rs. 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 Rs. 50, this is a valid contract.



**c) Promise to pay time-barred debts [Section 25 (3)]:** Where there is an agreement, made in writing and signed by the debtor or by his agent, to pay wholly or in part a time barred debt, the agreement is valid and binding even though there is no consideration. If A owes B Rs. 1,000 but the debt is lapsed due to time-bar and A further makes a written promise to pay Rs. 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 as a gift he cannot claim back the property subsequently on the ground of lack of consideration.

**f) Bailment (Section 148):** No consideration is required to effect the contract of bailment.

**Q-57:** Explain the term "**coercion**" and describe its effect on the validity of a contract?

**Ans:-** As per section 15 of the Indian Contract Act, 1872 "Coercion" is the committing or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. It is immaterial whether the Indian Penal Code is or is not in force at the place where the coercion is employed.

According to section 19 of the Act, when consent to an agreement is caused by coercion, the contract is voidable at the option of the party, whose consent was so caused. The aggrieved party, whose consent was so caused can enforce the agreement or treat it as void and rescind it. The injured party might insist on being placed in the same position in which he might have been had the vitiating circumstances not been present.

As per section 64 where a contract is voidable and the party entitled to avoid it decides to do so by rescinding it, he must restore any benefit which he might have received from the other

party. He cannot avoid the contract and at the same time enjoy the benefit under the rescinded/avoided contract.

**Q-58:** Explain the circumstances in which the person is deemed to be in a position to dominate the will of the other person under the Indian Contract Act, 1872.

**Ans:-** A person is deemed to be in such position in the following circumstances:

**i. Real and apparent authority;** Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.

**ii. Fiduciary relationship:** where relation of trust and confidence exists between the parties to a contract. Such type of relationship exists between father and son, solicitor and client etc.

**iii. Mental distress:** An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or of old age.

**iv. Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.

**Q-59:** "Mere silence is not fraud" but there are some circumstances where the "silence is fraud". Explain the circumstances as per the provision of Indian Contract Act, 1872?

**Ans:-** U/S 17 of the Indian Contract Act 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- i. the suggestion, as a fact, of that Which is not true, by one who does not believe it to be true;
- ii. the active concealment of a fact by one having knowledge or belief of the fact;
- iii. a promise made without any intention of performing it;
- iv. any other act fitted to deceive;
- v. any such act or omission as the law specially declares to be fraudulent.

Under the Indian Contract Act mere silence is not fraud. A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i .e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly, there is no duty to disclose facts which are within the knowledge of both the parties. However there are cases where silence shall be treated as fraud:

**I. Duty of person to speak:** Where the circumstances of the case are such that it is the duty of the person observing silence to 'peals. Following contracts come within this category:

**i. Fiduciary Relationship**

**ii. Contracts of Insurance**

**iii. Contracts of marriage**

**iv. Contracts of family settlement**

**v. Share Allotment contracts,**

**2. Where the silence itself is equivalent to speech:** For example, A says to B "If you do not deny it, I shall assume that the horse is sound." A says nothing. His silence amounts Speech.

**Q-60:** Decide with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:

- i. Vijay agrees with Saini to sell his black horse for 3,00,000. Unknown to both the Parties, the horse was dead at the time of the agreement.
- ii. Sarvesh sells the goodwill of his shop to. Vikas for 10,00,000 and promises not to carry on such business forever and anywhere in India.
- iii. Mr. X agrees to write a book with a publisher. After few days, X dies in an accident.

**Ans:- i.** The contract is void ab intio. As per Section 20 of the Indian Contract Act, 1872, an agreement under by mistake of fact is void. In this case, there is mistake of fact as to the existence of the subject matter, i.e., with respect to the selling of horse which was dead at the time of the agreement, it is unknown to both the parties.

**ii.** The agreement is void. As per Section 27 of the Indian Contract Act, 1872, an' agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of goodwill, not to carry on same business, provided that the conditions must be reasonable regarding the duration and Place of the business. Since in the given case, restraint to carry on business was forever and anywhere in India, the terms being unreasonable the agreement in question is void.

**iii.** The contract is void. As per section 2(j) of the Contract Act, "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". In the present case, Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. As the contract is of personal skill the death of the writes results in discharge of the contract due to supervening impossibility. Here the contract becomes void due to the impossibility of performance of the contract.

**Q-61:** State the difference between coercion and Undue Influence?

**Ans:- DISTINCTION BETWEEN COERCION AND UNDUE INFLUENCE**

Basis of	Coercion	Undue Influence
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<b>Difference</b>		
<b>Section</b>	Section 15	Section 16
<b>Nature</b>	Coercion involves use of physical force/threat.	Undue influence involves use of moral pressure.
<b>Criminal Action</b>	Coercion involves committing or threatening to commit any act which is forbidden by Indian Penal Code or detaining/threatening to detain any property belonging to the other.	In case of Under Influence, there is no such act involved.
<b>Intention</b>	Coercion is exercised to compel the other party to enter into a contract.	Under Influence is exercised to obtain an unfair advantage over the other.
<b>Relationship</b>	In Coercion, there may be strangers involved, i.e. there may not be any relation between parties.	In Undue Influence, there must be some kind of relation between the parties.
<b>Restitution</b>	In case of Coercion, if the contract is rescinded by the aggrieved party, then any amount of benefit received has to be restored back.	In case of Undue Influence, the Court has discretion whether to pass orders for restoration of any such benefit, or not.

**Q-62:** "The basic rule is that the promisor must perform exactly what he has promised to perform." Explain stating the obligation of parties to contracts.

**Ans:-** As per section 37 of the Indian Contract Act, 1872, 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. 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.

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

For example 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.

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

**Q-63:** Mr. Sonumal a wealthy individual provided a loan of 80,000 to Mr. Datumal on 26.02.2019. The borrower Mr. Datumal asked for a further loan of 1,50,000. Mr. Sonumal agreed but provided the loan in parts at different dates. He provided 1,00,000 on 28.02.2019 and remaining 50,000 on 03.03.2019. On 10.03.2019 Mr. Datumal while paying off part 75,000 to Mr. Sonumal insisted that the lender should adjusted 50,000 towards the loan taken on 03.03.2019 and balance as against the loan on 26.02.2019. Mr. Sonumal objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.



Now you decide:

- a) Whether the contention of Mr. Datumal correct or otherwise as per the provisions of the Indian Contract Act, 1872?
- b) What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
- c) What would the mode of adjustment/appropriation of such part payment in case neither Mr. Sonumal nor Mr. Datumal insist any order of adjustment on their part?

**Ans:-** In case where a debtor owes several debts to the same creditor and makes payment which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.

U/s 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

U/s 60 of the Act, where the 'debtor has omitted to intimate and there are no other circumstances indicating to which, debt the payment is to be applied, the creditor may ,apply it' at-his discretion to any lawful debt actually due and payable to him from the debtor, including a time bared debt.

U/s 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

In the above case Mr. Datumal had taken various loans from Mr. Sonumal on various dates. Mr. Datumal pays a part of the debt specifying the debt to be set off. Mr. Sonumal objected and

asked the borrower to adjust in the order of date of borrowal of funds. Since the debtor has specified the order of settlement the creditor has to accept it.

Thus

**a)** The contention of Mr. Datumal is correct and he can specify the manner of appropriation of repayment of debt.

**b)** In case where Mr. Datumal fails to specify the manner of appropriation of debt on part repayment, Mr. Sonumal the creditor, can appropriate the payment as per his choice.

**c)** In case where neither Mr. Datumal nor Mr. Sonumal specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

**Q-64:** What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises?

**Ans:-** The term quantum meruit means as much as is earned or as much as is merited. Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. It also covers a case where the party injured by the breach had at time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfilled:

**i.** It is only available if the original contract has been discharged.

**ii.** The claim must be brought by a party not in default.

The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum meruit is restitutory.

The claim for quantum meruit arises in the following cases:

- i. when an agreement is discovered to be void or when a contract becomes void.
- ii. When something is done without any intention to do so gratuitously.
- iii. Where there is an express or implied contract to render services but there is no agreement as to remuneration.
- iv. When one party abandons or refuses to perform the contract.
- v. Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
- vi. When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

**Q-65:** Pick out the correct answer from the following and give reason:

Promises to paint a picture for B by certain day, at a certain price. A dies before the day. The contract:

- (1) can be enforced by A's representative
- (2) can be enforced by B
- (3) can be enforced either by A's representative or by B
- (4) cannot be enforced either by A's representative or by B

**Ans:-** Correct answer is option (4): The Contract cannot be enforced either by A's representative or by B. To paint a picture is a personal contract and may be performed only personally. A

personal contract cannot be performed by anybody other than the promisee. Hence, if A dies, the contract cannot be enforced.

**Q-66:** What do we understand by Breach of Contract. Also state the types of Breach of Contract?

**Ans:-** Breach means failure of a party to perform his or her obligation under a contract. Breach of contract may arise in two ways:

- (1) Actual breach of contract
- (2) Anticipatory breach of contract

Actual breach of contract may be committed-

- (a) At the time when the performance of the contract is due: Here breach has been committed at the time when the performance becomes due.
- (b) During the performance of the contract: Here breach of contract occurs during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act.

**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.

Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.

**Effect of Anticipatory Breach:** The promisee is excused from performance or from further performance. Further he gets an option:

1. 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

2. 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.

**Q-67:** X, a minor was studying in M.Com. in a college. On 1st July, 2019 he took a loan of 1,00,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2019. X possesses assets worth 9 lakhs. On due date, X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act 1872 decide whether B would succeed.

**Ans:-** According to section 68 of Indian Contract Act, 1872, if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. In the above case X, a minor, took a loan of 1,00,000 from B for payment of his college fees and to purchase books. On due date, X fails to pay back the loan to B. Since the loan given to X is for the necessaries suited to the conditions in life of the minor, his assets can be sued to reimburse B.

Thus B would succeed.

**Q-68:** A coolie in uniform picks up the luggage of R to be carried out of the railway station without being asked by R and R allows him to do so. Examine whether the coolie is entitled to receive money from R under the Indian Contract Act, 1872.

**Ans:-** Implied contracts are those contracts where the obligation between the parties is not created by an agreement but by the imposition. The imposition may be by law or by actions. The purpose of this contract is to prevent the unjust enrichment of one at the expense of the other. Here even though there is no contract between the parties by implication a contract is made and it carries the same obligation as that of the contract.

In the above case a coolie picks the luggage of R without R asking him to do so. As R had not asked for the services the contract is not created but R not stopping the coolie shows that he has accepted the work done by him and such acceptance amounts to an implied contract between R and the coolie.

Hence R is liable to pay the coolie the charges for the work done.

**Q-69:** What is contingent contract? Discuss the essentials of contingent contract as per the Indian Contract Act, 1872.

**Ans:-** A contract may be absolute or 'contingent. As per section 31 a contingent contract "is a contract to do-or not to do something, if some event, collateral to such contract does or 'does not happened. 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 are:

i. There must be a contract to do or not to do something,



ii. The performance of the contract must depend upon the happening or non happening of some event.

iii. The happening of the event is uncertain.

iv. The event on which the performance is made to depend upon is an event collateral to the contract i.e. it does not form part of the reciprocal promises which constitute the contract. The event should neither be a performance promised, nor the consideration for the promise.

v. The contingent event 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:

1. Contingent contract dependent on the happening of an uncertain future cannot be enforced until the event has happened. If the event becomes impossible, such contracts become void.

2. Where a contingent contract is to be performed if a particular event does not happening performance can be enforced only when happening of that event becomes impossible.

3. If a contract is contingent upon, how a person will act at an unspecified time the event 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.

4. The contingent contracts to do or not to do anything if an impossible event happens, are void whether or not the fact is known to the parties.

**Q-70:** Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872.

**Ans:-** Quasi-Contracts: Meaning; Features; Identified Circumstances (Sections 68 to 72 of the Indian Contract Act, 1872):

Meaning and Salient Features: Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as "quasi-contracts" as they create some, obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money; 'Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

**Circumstances Identified as quasi-Contracts:**

**1. Claim for necessaries supplied to persons incapable of contracting:** Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.

**2. Right to recover money paid for another person:** A person, who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.

**3. Obligation of person enjoying benefits of non-gratuitous act:** Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

**4. Responsibility of finder of goods:** A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.

5. Liability for money paid or thing delivered by mistake or by coercion: A person, to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

In all the above cases contractual liability arises without any agreement between the parties.

**Q-71:** State briefly the essential elements of a contract of sale under the Sale of Goods Act, 1930.

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

(i) There must be at least two parties, buyer and seller. Buyer is the person who buys or agrees to buy and seller is the person who sells or agrees to sell. The contract of sale is made by an offer to buy or sell goods for a price by one party and the acceptance of such offer by other.

(ii) The subject matter of the contract must necessarily be goods. Goods means any moveable goods. It may be either existing goods, owned or possessed by the seller or future goods.

(iii) The transfer of goods must take place for a price. The consideration in case of sale of goods must always be in money. However it may also be partly in cash and partly in goods.

(iv) Transfer can be only of general property and not of special property.

(v) A contract of sale may either be absolute or conditional.

(vi.) All other essential elements of a valid contract must be present in the contract of sale, e.g. competency of parties, legality of object and consideration etc.

**Q-72:** State the Difference between Sale and Agreement to Sell.

**Ans:- Difference between “Sale” and “Agreement to sell”**

Particulars	Sale	Agreement to sell
<b>1. Meaning</b>	Where under a contract of sale, the property (ownership) in the Goods is transferred from the Seller to the Buyer, it is called a Sale.	Where under a contract of sale, transfer of the property (owner) in the Goods is to take place at a future time or subject to some condition thereafter to be fulfilled; it is called an “agreement to sell”. [Sec. 4(3)]
<b>2. Example</b>	Ram sells 20 bags of rice to Hari for a sum of Rs. 10,000. It is a sale since the ownership in 20 bags of rice has been transferred from Ram to Hari for a consideration of Rs. 10,000.	Mani agrees to buy 1,000 kgs of cement to arrive by a certain ship on a future date. The property in Goods (cement) will pass to the Buyer only when Goods arrive. Also the agreement subject to condition that the ship arrives in the port with Goods.
<b>3. Transfer of Risk</b>	Buyer becomes the owner of Goods as soon as the contract is made. Hence the Buyer bears the risk.	Seller continues to be the owner till the agreement to sell becomes sale and hence the risk lies with him only.
<b>4. Right created</b>	Creates a right in rem (right against property).	Creates a right in personam (right against a person).
<b>5. Type of Goods</b>	A Sale can be made only in respect of specific and ascertained Goods.	An agreement to sell may be made future and contingent Goods.
<b>6. Type of Contract</b>	Generally, executed contract.	Executory contract.
<b>7. Remedies available for breach of contract</b>	<b>Buyer’s breach:</b> Seller can (i) sue for price of Goods even if Goods are in his own possession (ii) resell the Goods, (iii) exercise right of lien and	<b>Buyer’s breach:</b> The Seller can sue only for damages and not for price. <b>Seller’s breach:</b> The Buyer can sue the Seller for damages and sue the third party

	(iv) exercise right of stoppage of Goods in transit, if necessary. <b>Seller's breach:</b> Buyer has double remedy, (i) suit for damages against the Seller, and (ii) recovering of Goods from third parties who bought them.	who bought those Goods.
<b>8. Right to Re-sell</b>	Once an effective sale is made, Seller cannot resell the Goods, as the property vests in the Buyer. However, if subsequent Buyer has purchased the Goods in good faith, for value, and without knowledge of prior sale, he gets a good title to such Goods.	Where Seller makes a re-sale, the subsequent Buyer, who takes the Goods for consideration and without notice of the prior agreement, gets a good title. The remedy available to the original Buyer is that he can sue for damages.
<b>9. Right of Buyer</b>	The Buyer can sue the Seller for non-delivery of Goods, when he has paid the price for it.	The aggrieved party can sue for damages only and not for the price, unless the price was payable at a stated date.
<b>10. Risk of loss of Goods</b>	Risk being associated with ownership lies with the Buyer and hence any loss shall be borne by the Buyer only, even though the Goods lie with Seller.	Since risk associated with ownership is not transferred, loss shall be borne by seller, even though the Goods lie with Buyer.

**Q-73:** Define the word Document of Title to goods and Document showing title to goods.

**Ans:- Document of Title to goods [sec 2(4)]:**

**(a)** A Document of Title to Goods is One which enables its possessor to deal with the goods described in it as if he were the owner, It is used in the ordinary course of business as proof of the possession or control of goods. It authorizes either by endorsement or by delivery, its possessor to transfer or receive goods represented by it. [Sec.2 (4)]

**(b)** Document of Title to Goods includes- (i) Bill of Lading, (ii) Dock Warrant, (iii) Warehouse keeper's Certificate, (iv) Wharfinger's Certificate, (v) Railway Receipt, (vi) Multimodal Transport Document, (vii) Warrant or Order for the delivery of Goods by delivery, the possessor of the document, to transfer or receive Goods thereby represented.

**Document showing Title to goods:**

A Document of Title enables a person named therein to transfer the property by mere endorsement and delivery, whereas a **document showing title** does not confer any right to transfer by way of endorsement and delivery. e.g. A Shares Certificate shows that the person named therein is entitled to the shares represented by it, but does not allow transfer of shares by mere endorsement and delivery of the certificate.

**Q-74:** Mrs. Geeta went to the local rice and wheat wholesale shop and asked for 100 kgs of Basmati rice. The Shopkeeper quoted the price of the same as 125 per kg to which she agreed. Mrs. Geeta insisted that she would like to see the sample of what will be provided to her by the shopkeeper before she agreed upon such purchase.

The shopkeeper showed her a bowl of rice as sample. The sample exactly corresponded to the entire lot. The buyer examined the sample casually without noticing the fact that even though the sample was that of Basmati Rice but it contained a mix of long and short grains. The cook on opening the bags complained that the dish if prepared with the rice would not taste the same as the quality of rice was not as per requirement of the dish. Now Mrs. Geeta wants to file a suit of fraud against the seller alleging him of selling mix of good and cheap quality rice. Will she be successful?



Explain the basic law on sale by sample under Sale of Goods Act 1930?

Decide the facts of the case and options open to the buyer for grievance redressal as per the provisions of Sale of Goods Act 1930?

What would be your answer in case Mrs. Geeta specified her exact requirement as to length of rice?

**Ans:-** As per the provisions of Sub-Section (1) of section 17 of the Sale of Goods Act, 1930, a contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

As per the provisions of Sub-Section (2) of Section 17 of the Sale of Goods Act, 1930, in a contract of sale by sample, there is an implied condition that:

- a. the bulk shall correspond with the sample in quality;
- b. the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- c. The goods must not have any latent defect which makes them un-merchantable.

If the above conditions are not fulfilled the buyer has a right to return the goods back to the seller.

Further while purchasing any goods of the buyer specifies to the seller,

- a. The reason of his purchase
- b. Depends upon the seller's skill and judgment and
- c. The seller deals in those goods

Then if the goods do not suit the buyers purpose the buyer can return the goods back. In the above case Mrs. Geeta saw a sample of rice and purchased it. When she received the goods she

casually checked it and failed to notice that the .rice was mixed with different quality of rice. As she was negligent while checking she will have no claim. Thus Mrs. Geeta will have no remedy against the seller.

However in case Mrs. Geeta specified her exact requirement as to length of rice, then there is an implied condition that the goods shall correspond with the description. If it is not so, the seller will be held liable.

**Q-75:** For the purpose of making uniform for the employees, Mr. Yadav bought dark blue coloured cloth from Vivek, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Mr. Yadav whether he is entitled to have any remedy under the sale of Goods Act, 1930?

**Ans:-** As per section 16 of the Sale of Goods Act, 1930, an implied condition in a contract of sale that an article is fit for a particular purpose only arises when

- (i) the purpose for which the goods are supplied is known to the seller,
- (ii) the buyer relied on the seller's skills or judgement and
- (iii) seller deals in the goods in his usual course of business.

If the following conditions are not fulfilled the seller has no obligation to supply goods which are suitable for the buyer's purpose but it the buyer's duty to see the goods are as per his requirement. If he fails to check the suitability of the goods he cannot hold the seller liable and shall be bound by the contract.

In the above case Mr. Yadav bought blue colour cloth from Vivek for making uniforms however he failed to inform the seller the reason for the purchase. The uniforms were stitched and the cloth was found unfit for the purpose. As the buyer had failed to inform the seller about the

reason of his purchase the condition as to quality and fitness does not arise in this case. The buyer is responsible for the wrong selection and the contract shall be valid.

Hence, the buyer will not succeed in getting any remedy from the seller.

**Q-76:** Discuss the various types of implied warranties as per the Sales of Goods Act, 1930?

**Ans:-** The following are the implied warranties under the Sale of Goods Act, 1930:

**i. Warranty as to undisturbed possession [Section 14(b)]:** An implied warranty that the buyer shall have and enjoy quiet possession of the goods. That is to say, if the buyer having got possession of the goods is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty.

**ii. Warranty as to non-existence of encumbrances [Section 14(c)]:** An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time the contract is entered into.

**iii. 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 or attached by the usage of trade.

**iv. Disclosure of dangerous nature of goods:** Where the goods are dangerous in nature and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of warranty, the seller may be liable in damages.

**Q-77:** What are the rules related to Acceptance of Delivery of Goods?

**Ans:-** Acceptance is deemed to take place when the buyer-

(i) intimates to the seller that he had accepted the goods; or

(ii) does any act to the goods, which is inconsistent with the ownership of the seller; or

(iii) 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 neglect or refusal to take delivery, and also reasonable charge for the care and custody of the goods.

**Q-78:** Mr. Samuel agreed to purchase 100 bales of cotton from Mr. Varun, out of his large stock and sent his men to take delivery of the goods. They could pack only 60 bales. Later on, there was an accidental fire and the entire stock was destroyed including 60 bales that were already packed. Referring to the provisions of the Sale of Goods Act, 1930 explain as to who will bear the loss and to what extent?

**Ans:-** As per section 26 of the Sale of Goods Act, 1930 unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at buyer's risk whether delivery has been made or not. Section 18 read with Section 23 of the Act provides that in a contract for the sale of unascertained goods property in the goods is transferred to the buyer only after the goods are ascertained and where there is contract for the sale of unascertained or future goods by description ownership is transferred only when the goods of that description are in a deliverable state are unconditionally appropriated to the contract. The appropriation of the goods shall be done either by the seller with the consent of the buyer or by the buyer with the consent of the seller and it may be either express or implied.

In the above case Varun sold 100 bales of cotton to Mr. Samuel by way of description. Mr. Samuel's men had gone to take the delivery of the goods. They had packed the 60 bales but

before they could pack the rest the entire cotton was burnt down. Assuming that the 60 bales which were taken over were identified by Mr. Samuel's men the ownership of the same has passed on to Mr. Samuel.

Thus for the 60 bales the loss shall be borne by Mr. Samuel as the ownership has transferred. For the rest 40 bales as the ownership is still with the seller, the seller shall bear the loss.

**Q-79:** Referring to the provisions of the Sale of Goods Act, 1930, state the rules provided to regulate the "Sale by Auction."

**Ans:-** Section 64 of the Sale of Goods Act, 1930 provides the following rules to regulate the sale by auction:

**(i) Where goods are sold in lots:** Where goods are put up for sale in lots, each lot is prima facie deemed to be subject of a separate contract of sale.

**(ii) Completion of the contract of sale:** The sale is complete when the auctioneer announces its completion by the fall of hammer or in any other customary manner and until such announcement is made, any bidder may retract from his bid.

**(iii) Right to bid may be reserved:** Right to bid may be reserved expressly by or on behalf of the seller and where such a right is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction.

**(iv) Where the sale is not notified by the seller:** Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer.

**(v) Reserved price:** The sale may be notified to be subject to a reserve or upset price; and

**(vi) Pretended bidding:** If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

**Q-80:** 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'

**Ans:-** The 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.

1. 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:

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

2. 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.

3. The unpaid seller loses his right of lien in the cases given u/s 49. As per this section

(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 loses his lien

The following are the differences between the rights of lien and the rights of stoppage in transit:

(i) The essence of a right of lien is to, retain possession whereas the right of stoppage in transit is right to regain possession.

(ii) Seller should be in possession of goods under lien while in stoppage in transit seller should have parted with the possession, possession should be with a carrier and buyer has not acquired the possession.

(iii) 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

(iv) Right of stoppage in transit begins when the right of lien ends. Thus, the end of the right of lien is the starting point of the right of stoppage the goods in transit.

**Q-81:** What are the rights of an unpaid seller against goods under the Sale of Goods Act, 1930?

**Ans:-** As per the provisions of Section 46 of the Sale of Goods Act, 1930, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

**a)** a lien on the goods for the price while he is in possession of them;

**b)** in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;

**c)** a right of re-sale as limited by this Act.

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

These rights can be exercised by the unpaid seller in the following circumstances:

**1. Right of lien (Section 47):** The unpaid seller of 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:-

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

**2. Right of stoppage in transit (Section 50):** When the buyer of goods becomes insolvent, the unpaid seller who has parted with the 'Possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until paid or tendered price of the goods.

**3. Right to re-sell the goods (Section 54):** The unpaid seller can exercise the right to re- sell the goods under the following conditions:

- a) Where the goods are of a perishable nature
- b) Where he gives notice to the buyer of his intention to re-sell the goods
- c) Where an unpaid seller who has exercised his right of lien or stoppage in transit retells OW goods.

**Q-82:** What are the rights of buyer against the seller, if the seller commits a breach of contract under the Sale Of Goods Act, 1930?

**Ans:-** If the seller commits a breach of contract, the buyer gets the following rights against the seller:

**1. Damages for non-delivery [Section 57]:** Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

**2. Suit for specific performance (Section 58):** Where the seller commits of breach of the contract of sale for goods which have no substitute the buyer can appeal to the court for specific performance. The court can order for specific performance only when the goods are ascertained or specific.

**3. Suit for breach of warranty (section 59):** Where there is breach of warranty on the part of the seller, or where the buyer elects to treat breach of condition as breach of warranty, the buyer is not entitled to reject the goods only on the basis of such breach of warranty but he may –

(i) set up against the seller the breach of warranty in diminution or extinction of the price; or

(ii) sue the seller for damages for breach of warranty.

**4. Repudiation of contract before due date (Section 60):** Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

**5. Sue for recovery of price:** where in a contract of sale the buyer has paid the price but the seller fails to perform his part the buyer may sue the seller for recovery of price. In case of breach of condition the buyer may repudiate the contract and on such repudiation also claim the price paid.

**Q-83:** Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008.

**Ans:-** Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

**(i)** To complete and submit incorporation document in the form prescribed with the Registrar electronically;

**(ii)** To have at least two partners for incorporation of LLP [Individual or body corporate];

**(iii)** To have registered office in India to which all communications will be made and received;

**(iv)** To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. At least one of them should be resident in India.

**(v)** A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.

**(vi)** To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First

**(vii)** Schedule of LLP Act, 2008 will be applied.

**(viii)** LLP Name.

### **Steps to incorporate LLP:**

#### **1. Name reservation:**

- The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
- Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.

#### **2. Incorporate LLP:**

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

➤ 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

### 3. LLP Agreement

➤ Execution of LLP Agreement is mandatory as per Section 23 of the Act

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

**Q-84:** Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?

**Ans:-** As per section 5 of the Limited Liability Partnership, 2008 any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

b) he is an un-discharged insolvent; or

c) he has applied to be adjudicated as an insolvent and his application is pending.

**Q-85:** Discuss the conditions under which LLP will be liable and not liable for the acts of the partner.

**Ans:-** As per section 27(2) of the LLP Act, 2008, the LLP is liable if a partner of an LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

However under section 27(1) of the LLP Act, 2008, an LLP is not bound by anything done by a partner in dealing with a person if—

- i. the partner in fact has no authority to act for the LLP in doing a particular act; and
- ii. the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

**Q-86:** "Partners indeed virtually embraces the character of both a principal and an agent". Describe the statement keeping in view of the provisions of the Indian Partnership Act, 1932.

**Ans:-** Subject to the provisions of section 18 of the Indian Partnership Act, 1932, a partner is the agent of the firm for the purposes of the business of the firm. As per section 4, partnership is the relationship between the partners who have agreed to share the profits of the business carried on by all or any of them acting for all. The definition clearly suggests that any of the partners can be the agent of the others. So far as a partner acts for himself and in his own interest in the common concern of the partnership, he may properly be deemed as a principal and so far as he acts for his partners, he may properly be deemed a an agent. The partner indeed virtually embraces the character of both a principal and an agent. The principal distinction between him and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas an agent as such has no interest in either. The rule that a partner is the agent of the firm for the purpose of the business of the firm cannot be applied to all transactions and dealings between the



partners themselves. It is applicable only to the act done by partners for the purpose of the business of the firm.

**Q-87:** Explain the following kind of partnership under the Indian Partnership Act, 1932:

i. Partnership at will

ii. Particular Partnership

**Ans:- Partnership at will:** According to Section 7 of the Indian Partnership Act, 1932, partnership at will is a partnership when:

- (i) no fixed period has been agreed upon for the, duration of the partnership; and
- (ii) there is no provision made as to the determination of the partnership.

These two conditions must be satisfied before a partnership can be regarded as a partnership at will.

A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

**Particular partnership:** A partnership may be organized for the prosecution of a single adventure as well as for the conduct of a continuous business. Where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called 'particular partnership'. A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

**Q-88:** What are the true tests of partnership?

**Ans:- 1. Agreement:** Partnership is created by agreement and by status (Section 5). The relation of partnership arises from contract and not from status;

**2. Sharing of Profit:** The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners. As discussed earlier, 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. 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.

**3. 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.

**Q-89:** Indicate points of difference between partnership and association?

**Ans:-**

Basis of difference	Partnership	Association
Meaning	Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business.	Association evolve out of social cause where there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.

<b>Examples</b>	Partnership to run a business and earn profit thereon.	Members of charitable society or religious association or an improvement scheme or building corporation or a mutual insurance society or a trade protection association.
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**Q-90:** Write a note on different types of partners?

**Ans:- a) Active or Actual or Ostensible partner:** He acts as an agent of other partners for all acts done in the ordinary course of business. In the event of his retirement, he must give a public notice in order to absolve himself of liabilities for acts of other partners done after his retirement.

**b) Sleeping or Dormant Partner:** They are called as 'sleeping' or 'dormant' partners. They share profits and losses and are liable to the third parties for all acts of the firm. They are, however not required to give public notice of their retirement from the firm.

**c) Nominal Partner:** A person who lends his name to the firm, without having any real interest in it, is called a nominal partner. He is not entitled to share the profits of the firm. Neither he invest in the firm nor takes part in the conduct of the business. He is, however liable to third parties for all acts of the firm.

**d) Partner in profits only:** A partner who is entitled to share the profits only without being liable for the losses is known as the partner for profits only and also liable to the third parties for all acts of the profits only.

**e) Incoming partners:** A person who is admitted as a partners into an already existing firm with the consent of all the existing partners is called as "incoming partner". Such a partner is not liable for any act of the firm done before his admission as a partner.

**f) Outgoing partner:** A partner who leaves a firm in which the rest of the partners continue to carry on business is called a retiring or outgoing partner. Such a partner remains liable to third parties for all acts of the firm until public notice is given of his retirement.

**g) Partner by holding out:** 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 conduct 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.

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'.

You must also note that for the purpose of fixing liability on a person who has, by representation, led another to act, it is not necessary to show that he was actuated by a fraudulent intention.

The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, give credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

**Q-91:** What is Partnership deed? What are the particulars that the partnership deed may contain?

**Ans:-** Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. 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'. It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899. Where the partnership of comprises immovable property, the instrument of partnership must be in writing, stamped and registered under the Registration Act.

Partnership deed may contain the following information:

1. Name of the partnership firm.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.

11. Provisions for Salaries or commissions, payable to the partners, if any.

12. 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.

**Q-92:** What do you mean by Goodwill as per the provisions of Indian Partnership Act, 1932?

**Ans:-** The term "**Goodwill**" has not been defined under the Indian Partnership Act, 1932. Section 14 of the Act states that the goodwill of a business shall 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.

**Q-93:** A, B and C are partners in a firm. As per terms of the partnership deed, A is entitled to 20% of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts.

What are the rights of A's legal representatives against the firm under the Indian Partnerships Act, 1932?

**Ans:-** As per section 37 of the Indian Partnership Act, 1932 where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

**(i)** Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or



(ii) His share shall be treated as advance and he shall be entitled to interest on the amount of his share in the property. The rate of interest shall be rate agreed in the contract and if nothing is agreed @6%.

In the above case A retires from the firm and is later dead. The other partners continue the business without settling the account.

Thus A's legal representatives shall be entitled, at his option to:

a) 20% shares of profits (as per the partnership deed); or

b) Interest at the rate of 6% per annum on the amount of A's share in the property.

**Q-94:** Write a note on Partnership property?

**Ans:-** The expression 'property of the firm', also referred to as 'partnership property', 'partnership assets', 'joint stock', 'common stock' or 'joint estate', denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled. The property which is deemed as belonging to the firm, in the absence of any agreement between the partners showing contrary intention, is comprised of the following items:

(1) all property, rights and interests which partners may have brought into the common stock as their contribution to the common business;

(2) all the property, rights and interest acquired or purchased by or for the firm, or for the purposes and in the course of the business of the firm; and

(3) Goodwill of the business.

The determination of the question whether a particular property is or is not 'property' of the firm ultimately depends on the real intention or agreement of the partners. Thus, the mere fact

that the property of a partner is being used for the purposes of the firm shall not by itself make it partnership property, unless it is intended to be treated as such. Partners may, by an agreement at any time, convert the property of any partner or partners (and such conversion, if made in good faith, would be effectual between the partners and against the creditors of the firm) or the separate property of any partner into a partnership property.

**Property of a partner:** Where the property is exclusively belonging to a person, it does not become a property of the partnership merely because it is used for the business of the partnership, such property will become property of the partnership if there is an agreement.

**APPLICATION OF THE PROPERTY OF THE FIRM:** Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

**Q-95:** Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932.

**Ans:-** Subject to a contract between the partners while settling the accounts of a firm after dissolution, the following rules shall be observed:

**(i)** Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

**(ii)** The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:

**a.** in paying the debts of the firm to third parties;

**b.** in paying to each partner rateably what is due to him from capital;

c. in paying to each partner rateably what is due to him on account of capital; and

d. the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

**Q-96:** A shop-keeper displayed a pair of dress in the show room and a price tag of 2000 was attached to the dress. Ms. Lovely looked at the tag and rushed to the cash counter. Then she asked the shop keeper to receive the payment and pack up the dress. The shopkeeper refused to hand over the dress to Ms. Lovely in consideration of the price stated in the price tag attached to the dress. Ms. Lovely seeks your advice whether she can sue the shopkeeper for the above cause under the Indian Contract Act, 1872.

**Ans:-** As per the provisions of The Indian Contract Act, 1872 a person making an invitation to offer does not make an offer rather invites the other party to make an offer. The object of invitation is to show he is willing to deal with any person who on the basis of this invitation is ready to enter into a contract. In the case of Harvey V. Facey the privy council explained the difference between an offer and invitation to offer and stated that quoting of price is not an offer. Any person acting such quotation is not accepting it but making an offer which if accepted shall result in a contract.

In the above case a dress was displayed at the shop window with a price tag of 2,000. Ms. Lovely intending to buy it -makes the payment and asks the shopkeeper to pack it. The shopkeeper refuses to sell it. As the price tag on the dress was just an invitation to offer the shopkeeper was not bound to sell the dress to Ms. Lovely on her offer to buy.

Thus Ms. Lovely cannot sue the shopkeeper.

**Q-97:** A sends an offer to B to sell his second-car for Rs. 40,000 with a condition that if B does not reply within a week, he (A) shall treat the offer as accepted. Is A correct in his proposition? What shall be the position if B communicates his acceptance after one week?

**Ans:-** Acceptance to an offer cannot be implied merely from the silence of the offeree, even if it is expressly stated in the offer itself. Unless the offeree has by his previous conduct indicated that his silence amount to acceptance, it cannot be taken as valid acceptance. So in the given problem, if B remains silent, it does not amount to acceptance.

The acceptance must be made within the time limit prescribed by the offer. The acceptance of an offer after the time prescribed by the offeror has elapsed will not avail to turn the offer into a contract. (Ramsgate Victoria Hotel (v) Montefiore).

**Q-98:** Mr. Balwant, an old man, by a registered deed of gift, granted certain landed property to Ms. Reema, his daughter. By the terms of the deed, it was stipulated that an annuity of 20, 000 should be paid every year to Mr. Sawant, who was the brother of Mr. Balwant.

On the same day Ms. Reema made a promise to Mr. Sawant and executed in his favour an agreement to give effect to the stipulation. Ms. Reema failed to pay the stipulated sum. In an action against her by Mr. Sawant, she contended that since Mr. Sawant had not furnished any consideration, he has no right of action. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Ms. Reema is valid?

**Ans:-** Consideration as defined u/s 2(d) means "when at the desire of the promisor, the promisee or any other person does something such an act is consideration." In light of the definition consideration may proceed from the promisee or any other person who is not a party to the contract.

In other words, there can be a stranger to a consideration but not stranger to a contract. In the given problem, Mr, Balwant has made a registered gift deed in favour of Ms. Reema for some

property on the condition .that she would pay annuity to Mr. Sawant. Mr. Sawant has not given any consideration to Ms. Reema but the consideration did flow from Mr. BalWant to Ms. Reema. Such consideration from third party is sufficient to enforce the promise of Ms. Reema, to pay an annuity to Mr. Sawant.

Thus, a stranger to the contract cannot enforce the contract but a stranger to consideration may enforce it. Hence, the Contention of Ms. Reema is not valid.

**Q-99:** Explain the concept of 'misrepresentation' in Matters, of contract.

**Ans:-** Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation means and includes-

- i. the positive assertion, in a manner not warranted by the information of the person Making it, of that which is not true, though he believes it to be true;
- ii. any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading' another to his prejudice or to the prejudice of any one claiming under him;
- iii. Causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

**Q-100:** Describe the cases in which the object and consideration is considered to be unlawful?

**Ans:-** The consideration or object of an agreement is lawful, unless-

1. It is forbidden by law; or
2. Is of such a nature that, if permitted, it would defeat the provisions of any law; or

3. Is fraudulent; or
4. Involves injury to the-person or property of another; or
5. The court regards it as immoral; or
6. Opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

